

CALIFORNIA CODE OF REGULATIONS
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Division 2. Financial Operations
Chapter 1. State Board of Control

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Chapter 1. State Board of Control

Article 1. General Provisions

§ 600. Statutory Authority.

Note: Authority cited for Chapter 1: Sections 13920 and 13921, Government Code, unless otherwise noted.

§ 601. Date Effective.

The State Board of Control has adopted the following rules and regulations effective October 1, 1957. These rules and regulations repeal all other previous rules and regulations hitherto in effect.

§ 602. Department Rules.

Nothing contained in the rules hereby fixed shall be construed to prohibit a state department or agency adopting rules governing its own employees or agents; provided, such rules do not conflict with these rules and regulations.

Article 1.1. State Board of Control-Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11409(a), that the printing of the regulations constituting the Conflict of Interest Code is impractical, and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

STATE BOARD OF CONTROL
926 J STREET, SUITE 300
SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION
428 J STREET, SUITE 800
SACRAMENTO, CA 95814

ARCHIVES
SECRETARY OF STATE
1020 O STREET
SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Article 1.1, Chapter 1, Division 2 of Title 2 of the California Code of Regulations and consists of sections numbered and titled as follows:

Article 1.1. Conflict of Interest Code Section 604.
General Provisions
Appendix

Article 2. Appropriations

§ 610. Fiscal Year.

(a) The State's fiscal year is from July 1st to and including June 30th of the following year.

(b) "Agreement or order" as used in this section means an agreement, contract, printing estimate, purchase order, subpurchase order, or Office of Procurement-Central Stores supply order.

(c) The date of an agreement or order for services, materials, supplies or equipment, determines the fiscal year appropriation for support or other current expenses, to which the expenditure shall be charged, except that:

(1) Expenditures pursuant to an agreement or order which stipulates that services or delivery be delayed until requested or until on or after a stated date in a subsequent fiscal year shall be charged to the fiscal year in which the services, materials, supplies or equipment are received. (However, the absence of a delivery date, or the specifying of a calendar date without qualifying instructions requesting delay in delivery, or the specifying of a delivery date as 10 days, 30 days, or the like, shall be construed to read "delivery as soon as possible," and expenditures shall be charged to the fiscal year in which the agreement or order was issued.)

(2) Expenditures pursuant to an agreement or order which is not an order on a definite supplier for a definite object or quantity of definite objects shall be charged to the fiscal year in which the services, materials, supplies or equipment were received.

Invoices pursuant to an agreement or order included in claims filed after the end of the fiscal year in which the agreement or order was issued shall be marked to show the date of receipt of the services, materials, supplies or equipment.

This section shall not be interpreted to require the issuance of a new agreement or order to cover items which, because of this section, are chargeable to a fiscal year subsequent to that in which the agreement or order was issued.

(d) A capital outlay appropriation for construction, improvements, repairs or equipment, when the

Architecture Revolving Fund is not used, is encumbered on the date of and to the extent of the agreement or order.

(e) Materials, supplies or equipment purchased and received in the months of May or June for use during the subsequent fiscal year may be paid for from the appropriation for such subsequent fiscal year. Invoices covering such purchases shall be marked as follows:
Purchased in _____ F.Y. for use in _____ F.Y.

§ 613. Purpose of Appropriations.

Appropriations are not interchangeable, and each shall be used only for the particular purpose defined in the act making the appropriation.

§ 614. Indebtedness in Excess of Appropriation.

No indebtedness can be created by any state officer or employee unless the written consent of the Department of Finance has first been obtained.

Article 2.5. General Hearing Procedures

Subarticle 1. General Provisions

§ 615.1. Applicable Law.

(a) The formal hearing provisions of the Administrative Procedure Act (Gov. Code, §§ 11500-11529) do not apply.

(b) The alternative dispute procedures of the Administrative Procedure Act (Gov. Code, §§ 11420.10-11420.30) do not apply.

(c) The declaratory decision provisions of the Administrative Procedure Act (Gov. Code, §§ 11465.10-11465.70) do not apply.

§ 615.2. Definitions.

(a) As used in this article:

(1) "Applicant" means a person submitting an application as defined in subsection (a)(2);

(2) "Application" means the following:

(A) an application for assistance or a supplemental claim in the Victims of Crime program under Government Code sections 13959-13969.4;

(B) a claim for indemnification by persons benefiting the public under Government Code sections 13970-13974.1; or

(C) a claim for compensation for erroneously-convicted felons under Penal Code sections 4900-4906.

(3) "Bid protest" means a challenge to an award of a contract under Public Contract Code section 10306 or 12102, subdivision (h).

(4) "Hearing" means an evidentiary proceeding for the determination of facts upon which the board makes its decision;

(5) "Hearing officer" means a person appointed by the Executive Officer under section 615.10 to preside at a hearing;

(6) "Informal hearing" means an informal proceeding in the nature of a conference during which the parties have an opportunity to be heard. The following are informal hearings:

(A) any hearing over which the board presides;

(B) any hearing limited to submission of written materials; and

(C) any hearing in which cross examination is not permitted;

(7) "May" means the action or conduct is permissive;

(8) "Mail delivery service" means a mail delivery company or organization other than the United States Postal Service;

(9) "Party" means a person or entity permitted by the board's regulations to participate in a hearing; and

(10) "Shall" means the action or conduct is mandatory.

Subarticle 2. Assignment to Board or Hearing Officer

§ 615.10. Assignment of Hearing.

(a) The Executive Officer may refer a hearing to:

(1) the board; or

(2) a hearing officer.

(b) A hearing officer may be:

(1) a board member;

(2) an employee of the board;

(3) an Administrative Law Judge of the Office of Administrative Hearings; or

(4) any person appointed by the board.

§ 615.11. Separation of Functions.

(a) A board member or hearing officer may not preside at a hearing if the board member or hearing officer:

(1) has functioned as an investigator or advocate concerning the application or bid protest that is the subject of the hearing; or

(2) is directly supervised by a person who has functioned as an investigator or advocate concerning the application or bid protest that is the subject of the hearing.

(b) A board member or hearing officer has functioned as an investigator or advocate concerning an application or bid protest if the person personally performed and was substantially involved with an application or bid protest, including:

(1) personally gathered facts or information upon which a staff recommendation was made about the final disposition of the application or bid protest; or

(2) personally participated in the development of a staff recommendation about the final disposition of the application or bid protest.

(c) A board member or hearing officer is directly supervised by a person who has functioned as an investigator or advocate concerning an application or bid protest if the work of the board member or hearing officer was assigned, evaluated, and directed, on a regular basis, by a person who engaged in the conduct listed in subdivision (b) of this section.

(d) A person is not substantially involved with an application or bid protest if the person:

(1) engaged in the conduct listed in subdivision (b) of this section only to a marginal or trivial extent; or

(2) has not developed a commitment to a particular outcome concerning the application or bid protest.

§ 615.12. Disqualification of Board Member or Hearing Officer.

(a) A board member or hearing officer shall disqualify himself or herself and withdraw from participating in any hearing if he or she:

(1) cannot provide a fair and impartial hearing;

(2) has bias;

(3) has prejudice; or

(4) has a personal or financial interest in the outcome of the hearing.

(b) A board member or hearing officer, who receives a communication in violation of section 618.1 may disqualify himself or herself from participating in the hearing.

(c) The parties may waive a disqualification of a board member or hearing officer in writing or on the record at the hearing.

(1) If the parties sign a written waiver of disqualification, it shall be included in the hearing record.

(d) A party may request the disqualification of a board member or hearing officer from participating in a hearing

for any of the reasons listed in subdivisions (a) and (b) of this section.

(e) A request to disqualify a board member or hearing officer must:

(1) be filed prior to the taking of any evidence at a hearing; and

(2) include a declaration under penalty of perjury stating specific facts to prove that a basis to disqualify the person exists under subdivisions (a) or (b) of this section.

(f) When the board is conducting the hearing, the other board members or designees who are not being challenged shall determine if the request to disqualify shall be granted or denied.

(g) When a hearing officer is conducting the hearing, the hearing officer shall determine whether the request to disqualify shall be granted or denied.

(h) Notwithstanding subsections (f) and (g), the board or hearing officer may refer the request to disqualify to the Executive Officer for determination.

(i) Unless there is additional evidence of bias, prejudice or interest in the outcome of the hearing, it shall not be grounds for disqualification that the board member or hearing officer:

(1) is or is not a member of a racial, ethnic, religious, sexual, or similar group whose rights are involved in the hearing;

(2) has experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the hearing; or

(3) has as a lawyer or public official participated in the drafting of laws or regulations, or attempted to pass or defeat laws or regulations that are to be applied, interpreted or implemented in the hearing.

(j) If a board member or hearing officer is disqualified for the reason stated in subsection (b), the disqualified board member or hearing officer may order that the part of the hearing record concerning the ex parte communication shall be sealed by a protective order.

(1) The sealed portion of the hearing record shall not be considered when deciding the matters at issue in the hearing.

(2) The sealed portion of the hearing record is part of the record for the purposes of subsequent judicial review.

Subarticle 3. Pre-Hearing Procedure

§ 616.1. Copy of Hearing Procedure.

A copy of the hearing procedures shall be provided at reasonable cost upon request.

§ 616.2. Duty to Furnish Correct Address.

- (a) A party shall inform the board and all other known parties of the party's correct address.
- (b) A representative of a party shall inform the board and all other known parties of the representative's correct address.
- (c) A party or representative of a party shall promptly inform the board and all other known parties of any change of address of the party or representative.

§ 616.3. Manner of Service of Notice or Documents.

- (a) A written notice or document required to be given shall be delivered personally, by mail, or by facsimile transmission to a party or representative at the address provided by the party or representative under section 616.2.
 - (1) Documents that exceed ten pages, including attachments, shall not be served upon or filed with the board or hearing officer by facsimile transmission.
- (b) Delivery by mail may include:
 - (1) first-class mail via the United States Postal Service;
 - (2) registered mail via the United States Postal Service;
 - (3) certified mail via the United States Postal Service; and
 - (4) mail delivery service.
- (c) A notice or document delivered personally shall be considered filed, served and received on the date of delivery.
- (d) A notice or document delivered by mail shall be considered filed or served on the mailing date if:
 - (1) the postage was prepaid; and
 - (2) the envelope containing the notice or document was addressed correctly.
- (e) The mailing date shall be presumed to be the date of the postmark or the date the envelope containing the notice or document was accepted by a mail delivery service if the mailing complied with subsection (d)(1) and (2).
- (f) A notice or document delivered by mail shall be presumed to be received five days after the mailing date if the mailing complied with subsection (d)(1) and (2).
- (g) A notice or document delivered by facsimile shall be presumed to be filed, served and received upon completion of the facsimile transmission.
 - (1) Documents for which the facsimile transmission is not completed before 5:00 p.m. shall be presumed to be filed, served and received at 8:00 a.m. the next day.
- (h) The party serving or filing the notice or document has the burden of proving that the party complied with this section.

§ 616.4. Notice of Hearing.

- (a) The Executive Officer shall send a notice to each party of the following:
 - (1) the date, time and location of the hearing;
 - (2) notice that the informal hearing procedures will be used, if applicable; and
 - (3) information about requesting a copy of the hearing procedures under section 616.1.
- (b) A notice of hearing shall be sent at least ten days before the start of the hearing.

Subarticle 4. Hearing Procedure

§ 617.1. Public Hearing.

- (a) Hearings shall be open to public observation, unless otherwise provided by law.
- (b) A hearing conducted by telephone, television, or other electronic means as provided in section 617.4 complies with subdivision (a) of this section if:
 - (1) members of the public may be physically present at the location where the board or hearing officer is conducting the hearing; and
 - (2) members of the public may inspect the hearing record and inspect any transcript obtained by the board or hearing officer.
- (A) A request to inspect the hearing record or any transcript obtained by the board or hearing officer shall be in writing and is governed by the provisions of the Public Records Act, Government Code sections 6250-6270.
- (B) The hearing record and any transcript obtained by the board or hearing officer shall be available for public inspection during regular business hours at the headquarters of the board.
- (c) This section shall not apply to any prehearing conference or settlement conference.

§ 617.2. Powers and Duties of Board or Hearing Officer.

- (a) The board or hearing officer shall have the following powers and duties:
 - (1) the power to regulate the course of the hearing, including the power to permit or limit:
 - (A) opening statements;
 - (B) re-direct examination;
 - (C) re-cross examination;
 - (D) presentation of rebuttal witnesses;

(E) allocation of time for each party to present its case, including the time allowed for cross examination of witnesses;

(F) oral or written closing arguments; and

(G) opening or closing briefs.

(2) the power to regulate the conduct of the parties and their representatives;

(3) the power to administer oaths and affirmations;

(4) the power to examine witnesses;

(5) the power to rule on evidentiary and procedural motions;

(6) the duty to conduct a fair and impartial hearing;

(7) the duty to maintain order;

(8) the duty to avoid unnecessary delay; and

(9) all powers and duties reasonably necessary to perform the functions contained in subsections (1) through (8).

(b) The board or hearing officer shall control the taking of evidence in any manner suited to learning the relevant facts and safeguarding the rights of the parties, including the limitation or exclusion of:

(1) repetitious evidence;

(2) irrelevant evidence;

(3) evidence that is tangential to the issues to be determined;

(4) evidence that is of limited probative value; or

(5) evidence that is unreliable.

§ 617.3. Representation of Parties.

(a) A party may represent himself or herself, or be represented by an attorney or other person.

(b) Notwithstanding subsection (a), the board or hearing officer may refuse to allow any person to represent a party in any hearing if the person at any hearing before the board or hearing officer:

(1) engaged in unethical, disruptive or contemptuous conduct;

(2) intentionally failed to comply with the proper instructions or orders of the board or hearing officer; or

(3) engaged in conduct that provides a basis for contempt under section 618.3 or sanctions under section 618.4.

§ 617.4. Hearing by Electronic Means.

(a) The board or hearing officer may conduct all or part of a hearing by telephone, television, or other simultaneous electronic means if each participant:

(1) has an opportunity to participate;

(2) can hear the entire hearing while it is taking place; and

(3) may observe exhibits.

(A) This requirement shall be satisfied if each participant has an opportunity prior to the hearing to see each exhibit to be used during a hearing conducted by electronic means.

(b) For purposes of this section, a participant in a hearing includes:

(1) a party;

(2) a party's representative; and

(3) a witness whose testimony will be provided by telephone, television, or other electronic means.

(c) No part of a hearing shall be conducted by telephone, television or other electronic means if a party objects to it.

(d) The party that requested that all or part of a hearing be conducted by electronic means may be responsible for providing, operating, and paying for all equipment needed to comply with subdivision (a).

(1) The party shall consult with the board, hearing officer, or Executive Officer to arrange for the equipment to be set up and operated.

§ 617.5. Informal Hearing.

(a) A party may object to having an informal hearing in writing within five days of receiving the hearing notice.

(b) The Executive Officer or hearing officer shall rule on an objection to an informal hearing before evidence is taken at a hearing.

(c) An objection to an informal hearing shall include:

(1) the specific facts and law upon which the objection is based; and

(2) specific facts and law relevant to the factors contained in subsection (f).

(d) An objection to an informal hearing that is limited to written materials shall include the following, to the extent relevant to the basis for the objection, or as required by the Executive Officer or hearing officer:

(1) the identity of the witnesses that the party wishes to present;

(2) a summary of the testimony that is anticipated from each witness; and

(3) the issues to which each witness will testify.

(e) An objection to an informal hearing that requests an opportunity to cross examine witnesses shall identify:

(1) the witnesses that the party wishes to cross examine; and

(2) the issues that the party wishes to explore during cross examination of each witness.

(f) If confidential facts or sources are relevant to the information required under subsections (d) or (e), a party shall:

- (1) state that confidential facts or sources are involved; and
 - (2) provide information that can be given without disclosing the confidential facts or sources.
- (g) The Executive Officer or hearing officer shall consider the following factors when ruling on an objection to an informal hearing:
- (1) complexity of legal or factual issues;
 - (2) necessity to evaluate credibility of witnesses for a proper determination of issues;
 - (3) parties' representation by legal counsel;
 - (4) necessity of witnesses being subject to cross examination for the proper determination of issues; and
 - (5) any other factor likely to affect a just and proper determination of issues.
- (h) If the objection to an informal hearing is sustained, the Executive Officer or hearing officer may permit:
- (1) testimony from parties;
 - (2) testimony from witnesses who are not parties; or
 - (3) cross examination of witnesses.
- (i) If the Executive Officer sustains an objection to an informal hearing over which the board was to preside, the Executive Officer shall assign the hearing to a hearing officer.

§ 617.6. Presentation Limited to Written Materials.

- (a) If the board, Executive Officer, or hearing officer determine that only written evidence or argument shall be permitted as provided by these regulations, all parties shall receive a reasonable opportunity to submit written materials to the board or hearing officer.
- (b) Written materials may include:
- (1) a statement of legal and factual issues;
 - (2) supporting documentation; and
 - (3) legal and factual arguments supporting the party's contentions.
- (c) The board or hearing officer may request additional documentation or legal arguments from the parties if necessary in the board's or hearing officer's discretion.

§ 617.7. Presentation of Oral Evidence.

- (a) Oral evidence shall be taken under oath or affirmation in all hearings, except an informal hearing.

(b) Oral evidence may be taken under oath or affirmation in an informal hearing.

(c) An oath or affirmation may be administered by:

- (1) a member of the board;
- (2) the hearing officer;
- (3) the hearing reporter,
- (4) a staff member of the board, as directed by the board.

(d) If oral evidence is permitted, each party has the following rights:

- (1) to examine witnesses called by the party;
- (2) to introduce exhibits into the hearing record; and
- (3) to rebut evidence.

(e) The board or hearing officer may question any party or witness.

(f) A party shall not be permitted to cross examine witnesses unless provided by regulation, or permitted by the discretion of the board, Executive Officer, or hearing officer.

(1) Cross examination of a witness may be permitted if it is necessary for a proper determination of the matter.

(2) In order to determine whether cross examination is necessary, the board, Executive Officer, or hearing officer may require a party to identify the issues that would be explored in cross examination.

(A) A party may be required to state that confidential facts or sources would be involved in the issues to be explored in cross examination, but may not be required to disclose the confidential facts or sources.

(3) If cross examination is permitted, a witness may be cross-examined on any relevant matter even though the matter was not covered during the direct examination.

(g) A party appearing at a hearing shall have the witnesses and evidence present and be ready to proceed when the matter is called.

§ 617.8. Official Notice.

(a) The board or hearing officer shall take official notice of those matters which must be judicially noticed by a court under Evidence Code section 451.

(b) The board or hearing officer may take official notice of those matters which may be judicially noticed by a court under Evidence Code section 452.

(c) Evidence Code sections 455 and 459, subdivisions (c) and (d) shall not apply.

§ 617.9. Failure to Appear or Proceed.

The failure of a party to appear at a hearing, or to proceed with a hearing, shall constitute a withdrawal of the action

or request for hearing, unless an extension of time for submission of documents or a continuance of the hearing has been granted.

Subarticle 5. Prohibited Conduct

§ 618.1. Prohibited Communication.

(a) If the board is a party to a pending proceeding, no board employee shall communicate about any issue in the proceeding to the board, a board member, or hearing officer.

(1) A communication is not prohibited by this subsection as long as all parties to the proceeding were given reasonable notice of, and an opportunity to participate in, the communication.

(b) No person or representative who has an interest in the outcome of a pending proceeding shall communicate about any issue in the proceeding with the board, a board member, or the hearing officer while the proceeding is pending before the board.

(1) A communication is not prohibited by this subsection as long as all parties to the proceeding were given reasonable notice of, and an opportunity to participate in, the communication.

(c) A hearing officer who is not a board member shall not communicate about any issue in the proceeding with the board or a board member while the proceeding is pending before the board.

(d) The following communications are not prohibited by subsection (a):

(1) a communication required to resolve an ex parte matter that is authorized by statute; or

(2) a communication concerning a matter of procedure or practice that is not in dispute.

(e) The following communications from a board employee are not prohibited by subsection (a):

(1) an employee who has not served as an investigator or advocate in the proceeding, as defined in section 615.11 may:

(A) provide assistance and advice about the issues to be resolved; or

(B) evaluate the evidence in the record;

(2) a communication about a settlement proposal that is advocated by the board employee.

(f) For the purpose of this section, a proceeding is pending before the board from the time an application or bid protest is submitted to the board until the board makes a final decision about it.

(1) For the purpose of this section, a final decision is made by the board upon adoption of a decision under sections 619.2 or 619.5.

§ 618.2. Disclosure of Prohibited Communication.

(a) A board member or hearing officer, who received a communication about a pending proceeding prior to serving as a board member or hearing officer that would violate section 618.1 if it had been received while presiding at a hearing, shall promptly:

(1) disclose the content of the communication on the record; and

(2) give all parties an opportunity to respond under subdivision (d).

(b) If the board, a board member, or hearing officer receives a communication in violation of section 618.1 the board or hearing officer shall include the following in the record of the hearing:

(1) a copy of any written communication;

(2) a copy of any written response to a written or oral communication;

(3) a memorandum about an oral communication that shall include:

(A) the substance of the oral communication;

(B) the substance of any oral response to the communication; and

(C) the identity of each person from whom the communication was received.

(c) The board or hearing officer shall notify all parties that:

(1) an impermissible ex parte communication was received; and

(2) that the materials required by subsection (b) have been included in the hearing record.

(d) A party may comment on the prohibited ex parte communication if the party requests to comment within ten days of receiving the notice required by this section.

(1) The board or hearing officer may allow a party who makes a timely request to present evidence about the subject of the communication.

(2) The board or hearing officer may reopen the record of a hearing that has been concluded in order to take evidence permitted by subsection (d)(1).

§ 618.3. Contempt.

(a) A person is subject to a contempt sanction for any of the following:

(1) disobedience of or resistance to a lawful order;

- (2) refusal to take the oath or affirmation as a witness;
- (3) obstruction or interruption of a hearing by:
 - (A) disorderly, contemptuous, or insolent behavior during a hearing toward the board, a board member, or a hearing officer;
 - (B) breach of the peace, boisterous conduct or violent disturbance during a hearing; or
 - (C) other unlawful interference with the process or proceedings;
- (4) violating the rules against ex parte communication in section 618.1; and
- (5) failure or refusal, without substantial justification, to comply with an order of the board or hearing officer.
- (b) The board or hearing officer may certify the facts that justify a contempt sanction to the superior court in the county where the hearing is held.
- (c) Copies of the following shall be served on the person subject to the contempt sanction:
 - (1) the certified statement required by subsection (b); and
 - (2) the order to show cause issued by the superior court.
- (d) A contempt proceeding is governed by Code of Civil Procedure, sections 1209-1222.

§ 618.4. Sanctions.

- (a) The board or hearing officer may order a party, the party's representative, or both, to pay reasonable expenses, including attorney's fees, as a result of:
 - (1) bad faith or frivolous actions or tactics; or
 - (2) actions or tactics solely intended to cause unnecessary delay.
- (b) For the purpose of this section, actions include, but are not limited to:
 - (1) the making or opposing of motions, objections, or requests; and
 - (2) the failure to comply with a lawful order of the board or hearing officer.
- (c) For the purpose of this section, frivolous means:
 - (1) totally without merit; or
 - (2) for the sole purpose of harassing another party or the board.
- (d) Before imposing sanctions under this section, the board or hearing officer shall provide the party notice and an opportunity to be heard.
 - (1) The notice and opportunity to be heard may occur either at the time the issue of sanctions is raised, or at another time.

Subarticle 6. Hearing Decisions

§ 619.1. Decision.

- (a) This section applies to decisions of the board and proposed decisions of hearing officers.
- (b) All hearing decisions and proposed decisions shall:
 - (1) be written; and
 - (2) contain a statement of the factual and legal bases for the decision.
- (c) If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the decision shall identify any specific evidence of the demeanor, manner or attitude of the witness that supports the credibility determination.
- (d) The decision shall be based on evidence in the hearing record and on matters subject to official notice under section 617.8.
- (e) The board members or hearing officer may use relevant experience, technical competence and specialized knowledge to evaluate the evidence.

§ 619.2. Decision by Board.

- (a) A decision of the board about a hearing it conducted shall be made by the board.
- (b) The board shall make its decision either at the conclusion of the hearing, or at another board meeting.
- (c) The board may adopt in whole the written recommendation of board staff as its decision if the recommendation complies with section 619.1.
- (d) If the board does not adopt in whole the staff recommendation:
 - (1) the board shall make a statement of decision that includes:
 - (A) the decision made about the application; and
 - (B) the reasons for the decision; and
 - (2) board staff shall prepare a written decision consistent with the board's statement of decision.
- (e) The decision of the board is effective upon its vote.
- (f) The board shall send a copy of its written decision to the parties.
 - (1) The board need not send a copy of its written decision under subsection (c) to the parties if the parties received, prior to the hearing, a copy of the staff recommendation that was adopted in whole as the board decision.

§ 619.3. Proposed Decision by Hearing Officer.

- (a) The hearing officer may take the matter under submission at the conclusion of the hearing.
- (b) The hearing officer shall prepare a proposed decision for the board that complies with section 619.1.
- (c) The proposed decision shall be submitted to the Executive Officer.

§ 619.4. Notice and Public Comment on Proposed Decision.

- (a) Copies of the proposed decision and notice of the board meeting at which consideration of the proposed decision is scheduled shall be mailed or delivered to all parties.
- (b) A party may submit written argument concerning whether or not the board should adopt the proposed decision.
 - (1) A written argument shall not exceed ten pages, including any attachments.
- (c) The Executive Officer may establish a schedule for the submission of written argument concerning the proposed decision.
- (d) Written argument concerning the proposed decision may address the following issues, or any issue identified by the Executive Officer:
 - (1) are the facts stated in the proposed decision supported by the evidence in the hearing record?
 - (2) does the proposed decision contains [sic] an accurate statement of the applicable law?
 - (3) does the proposed decision correctly apply the applicable law?
 - (4) is there additional evidence that the board should consider?
 - (5) if the board should consider additional evidence, why was it not presented at the hearing?
 - (6) if the board rejects the proposed decision, what further actions should the board take to resolve the matter?

§ 619.5. Action on Proposed Decision by Board.

- (a) The Executive Officer shall schedule consideration of a hearing officer's proposed decision on the agenda of a board meeting.
- (b) The board may take any of the following actions concerning the proposed decision:
 - (1) adopt the proposed decision in whole or in part;
 - (2) reject the proposed decision in whole or in part; or
 - (3) defer decision and request the hearing officer to address specific issues or provide additional information.

- (c) If the board rejects the proposed decision in whole or in part, it may take any of the following actions:
 - (1) decide the case itself after reviewing the record, including a transcript of the hearing;
 - (2) decide the case itself based upon a statement of facts agreed to by the parties;
 - (3) decide the case itself by conducting a hearing to take additional evidence or argument;
 - (4) order the hearing officer to take additional evidence or argument; or
 - (5) order the hearing officer to address specific issues in the proposed decision.
- (d) If the board rejects the proposed decision in whole or in part and orders a hearing officer to take additional evidence under subsection (c)(4), or respond to specific issues under subsection (c)(5), the hearing officer:
 - (1) may take additional evidence as directed by the board or as necessary in the hearing officer's discretion; and
 - (2) shall prepare a proposed decision as required by section 619.3.
- (e) If the board remands the matter to a hearing officer under subsection (c)(4) or (c)(5), it shall be returned to the hearing officer who prepared the proposed decision, if practicable.
 - (1) If the hearing officer who prepared the proposed decision is not reasonably available, the Executive Officer may assign it to another hearing officer.
 - (2) If the matter is assigned to another hearing officer, the new hearing officer shall review the entire record, including a transcript, before taking additional evidence.

§ 619.6. Correction of Decision.

- (a) The board may modify a decision or proposed decision before or after adoption to correct a mistake or clerical error.
- (b) A copy of the modified decision shall be sent to all parties.

§ 619.7. Precedent Decisions.

- (a) The board may designate any of its decisions in whole or in part as a precedent decision.
- (b) The board may designate a prior decision as a precedent decision.
- (c) A decision may be designated as a precedent decision if it:
 - (1) addresses a legal or factual issue of general public interest;
 - (2) resolves a conflict in the law;

- (3) provides an overview of existing law or policy;
- (4) clarifies existing law or policy;
- (5) establishes a new rule of law or policy; or
- (6) contains a significant legal or policy determination of general application.
- (d) A precedential decision may be used as legal authority to interpret and implement the law in subsequent board decisions.
- (e) The board may reverse in whole or in part the prior designation of a decision as a precedent decision.
- (f) The board shall maintain an index of significant legal and policy determinations contained in precedent decisions.
- (1) The index shall be updated annually, unless no new precedent decisions were designated.
- (2) The index shall be available for purchase by the public.
- (A) The availability of the index shall be publicized annually in the California Regulatory Notice Register.

Article 3. Presentation of Claims to the Controller

§ 620. Segregation.

Claims shall be segregated by funds, by appropriations, and by fiscal years in which the obligations were incurred.

§ 621. Explanation.

Every unusual item of a claim when submitted shall be explained adequately.

§ 622. Information Required.

Every claim and every supporting pay roll schedule, or schedule of bills filed, shall be typewritten and shall show:

- (a) The name of the department, board, commission, agency or officer.
- (b) The total amount claimed.
- (c) The designation of the appropriation and, excepting the General Fund, the fund against which the claim is filed.
- (d) The chapter number and year of the statutes making the appropriation.
- (e) The fiscal year in which the indebtedness was incurred.

§ 622.1. Claims Recorded on Electronic Tape.

(a) Subject to the approval of the Controller, claims recorded on electronic tape may be presented under the following conditions:

(1) Each such claim shall consist of the electronic tape listing each payee and the amount of payment. A written reproduction of the electronic tape will be retained by the agency, or the information so provided will be retained by the agency on electronic tape, as a part of its records for the period required by the Controller. Original claim documents supporting the electronic tape listing, or reproductions thereof, shall be retained by the agency for the same period as agency copies of claim schedules unless otherwise provided by law. Such original claims documents, or reproductions thereof, shall be maintained in a manner that will enable verification of the propriety of claims recorded on the electronic tape.

(b) In accordance with Section 624, each claim shall contain a certificate reading as follows:

"I hereby certify under penalty of perjury as follows:

"That I am a duly appointed, qualified, and acting officer of the herein named state agency. That the respective amounts and payees included in this claim have been recorded on that certain electronic tape identified in the within schedule. That a written reproduction, listing each payee and the amount of payment, was prepared from said tape and will be retained as a part of the official records of said state agency, or the information so provided will be retained on electronic tape. That the respective amounts, payees, and totals are true and correct as set forth on said electronic tape and in said written reproduction, or retained electronic tape. That original claim documents, or reproductions thereof, have been retained and are maintained in a manner that will enable verification of the propriety of the amounts claimed. That payments are properly payable to each and all of the claimants as contained therein, and that such payments are authorized in the amount, for the period, and to the respective payees as indicated therein under all governing laws and regulations. That I have not violated any of the provisions of Sections 1090 to 1096, inclusive, Government Code."

(c) Claims presented on electronic tape pursuant to this section, are excepted from the requirements of Sections 650 to 656, inclusive.

§ 623. Additional Information Required.

In addition to the information required under Section 622 every schedule of bills filed shall show:

- (a) The name and address of the person in whose favor the warrant is to be drawn.

(b) The items briefly and clearly stated in chronological order, together with all the charges for the period covered by the schedule.

(c) All entries shall be carried to the dollars and cents column direct.

(d) No items shall be interlined.

§ 624. Approval of Claims.

Each claim shall be approved by the department head or another person properly authorized, or, in the case of boards and commissions, by the secretary or by some other person, pursuant to a duly adopted resolution of the board or commission. Unless otherwise provided by law, every claim shall be accompanied by an affidavit or certificate under penalty of perjury of the officer, agent or employee directly responsible for the claim.

§ 625. Correction of Claims.

(a) Items or the amounts of items which are incorrect or are not proper charges against the State shall be corrected or eliminated by the Controller, who shall indicate his reason for the change. The total amount claimed shall be adjusted accordingly.

(b) The Controller may, however, in his discretion, disregard net errors of \$5 or under in each individual claim if in doing so time and expense will be saved.

(c) If the items eliminated or amounts reduced are proper charges against the State, they may be resubmitted with necessary correction or explanation with the next claim submitted. Such items shall be clearly identified and explained.

Article 3.1. Eligibility of Alien for Programs

Subarticle 1. General Provisions

§ 627.1. Applicability.

(a) This article applies to applications submitted to the following programs:

(1) erroneously-convicted felons under Penal Code sections 4900-4901;

(2) citizens benefiting the public under Government Code section 13972; and

(3) persons who provide information leading to the location of missing children under Government Code section 13974.1.

§ 627.2. General Provisions.

(a) All eligibility requirements contained in this article shall be applied without regard to the race, creed, color,

gender, religion, or national origin of the person submitting an application.

(b) Nothing in this article shall be construed as withdrawing eligibility for:

(1) necessary treatment of an emergency medical condition; and

(2) the testing and treatment of symptoms of a communicable disease.

§ 627.3. Definitions.

(a) Unless otherwise provided, the terms used in this article shall have the same meaning given the terms in 8 U.S.C. section 1101(a).

(b) As used in this article:

(1) "Alien" means any person not a citizen or national of the United States, as defined in 8 U.S.C. section 1101(a)(3);

(2) "Applicant" means a person submitting an application as defined in subsection (b)(3);

(3) "Application" means the following:

(A) a claim for compensation for erroneously-convicted felons under Penal Code sections 4900-4901;

(B) a claim for compensation for citizens benefiting the public under Government Code section 13972; and

(C) a claim for compensation for persons who provide information leading to the location of missing children under Government Code section 13974.1;

(4) "Benefits" means any payment, compensation or reimbursement under a program;

(5) "Board" means the State Board of Control;

(6) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity so that the following could reasonably be expected to result without immediate medical attention:

(A) the patient's health would be placed in serious jeopardy;

(B) serious impairment to bodily function; or

(C) serious dysfunction of any bodily organ or part;

(7) "INS" means the U.S. Immigration and Naturalization Service;

(8) "Nonimmigrant Alien" means those aliens who are not classified as immigrants under 8 U.S.C. section 1101(a)(15);

(9) "Program" means the following programs administered by the Board:

(A) erroneously-convicted felons under Penal Code sections 4900-4901;

(B) citizens benefiting the public under Government Code section 13972; and

(C) persons who provide information leading to the location of missing children under Government Code section 13974.1;

(10) "Qualified Alien" means an alien who, at the time the alien files an application in a program, is:

(A) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act, 8 U.S.C. section 1101 et seq.;

(B) an alien who is granted asylum under 8 U.S.C. section 1158;

(C) a refugee who is admitted to the United States under 8 U.S.C. section 1157;

(D) an alien who is paroled into the United States under 8 U.S.C. section 1182(d)(5) for a period of at least one year;

(E) an alien whose deportation is being withheld under 8 U.S.C. section 1253(h) (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or under 8 U.S.C. section 1251(b)(3) (as amended by section 305(a) of division C of Public Law 104-208);

(F) an alien who is granted conditional entry under 8 U.S.C. section 1153(a)(7) as it was in effect prior to April 1, 1980;

(G) an alien who is a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (8 U.S.C. § 1522)); and

(H) an alien who meets all of the following conditions:

1. the alien has been battered or subjected to extreme cruelty in the United States by:

A. a spouse;

B. a parent;

C. a member of the spouse's family residing in the alien's household and the spouse or parent consented to or acquiesced in the battery or cruelty; or

D. a member of the parent's family residing in the alien's household and the spouse or parent consented to or acquiesced in the battery or cruelty; and

E. for purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence;

2. there is substantial connection between the battery or cruelty and the need for the program's benefits as follows:

A. for purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

i. the benefits are needed to enable the alien to become self-sufficient following separation from the abuser;

ii. the benefits are needed to enable the alien to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien from the abuser;

iii. the benefits are needed due to a loss of financial support resulting from [sic] the alien's separation from the abuser;

iv. the benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien to lose his or her job or to earn less or to require the alien to leave his or her job for safety reasons;

v. the benefits are needed because the alien requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty;

vi. the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser);

vii. the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;

viii. the benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien and/or to care for any resulting children; or

ix. where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien had when living with the abuser;

3. the alien has been approved for or has a petition pending which sets forth a prima facie case for:

A. status as a spouse or a child of a United States citizen under 8 U.S.C. section 1154(a)(1)(A)(ii),(iii), or (iv);

B. classification under 8 U.S.C. section 1154(a)(1)(B)(ii) or (iii);

C. suspension of deportation and adjustment of status under 8 U.S.C. section 1254 as in effect prior to April 1, 1997 [Pub.L. 104-208, § 501 (effective September 30, 1996, pursuant to § 591); Pub. L. 104-208, § 304 (effective April 1, 1997, pursuant to § 309); Pub.L. 105-

33, s 5581 (effective pursuant to § 5582)] (incorrectly codified as "cancellation of removal under section 240A of such Act [8 U.S.C. § 1229b] (as in effect prior to April 1, 1997)");

D. status as a spouse or child of a United States citizen under 8 U.S.C. section 1154(a)(1)(A)(i) or classification under 8 U.S.C. section 1154(a)(1)(B)(i); or

E. cancellation of removal under 8 U.S.C. section 1229b(b)(2);

4. the individual responsible for the battery or cruelty does not reside in the same household as the individual subjected to the battery or cruelty during the period for which program benefits are sought;

(I) an alien who meets all of the following conditions:

1. the alien's child has been battered or subjected to extreme cruelty in the United States by:

A. the alien's spouse;

B. a parent of the alien;

C. a member of the spouse's family residing in the alien's household, and the spouse or parent consented to, or acquiesced in the battery or cruelty; or

D. a member of the parent's family residing in the alien's household, and the spouse or parent consented to or acquiesced in the battery or cruelty; and

E. for purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury.

Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence;

2. the alien did not actively participate in the battery or cruelty;

3. there is a substantial connection between the battery or cruelty and the need for the program's benefits as follows:

A. for purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

i. the benefits are needed to enable the alien's child to become self-sufficient following separation from the abuser;

ii. the benefits are needed to enable the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien's child from the abuser;

iii. the benefits are needed due to a loss of financial support resulting from the alien's child's separation from the abuser;

iv. the benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien's child to lose his or her job or to earn less or to require the alien's child to leave his or her job for safety reasons;

v. the benefits are needed because the alien's child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty;

vi. the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's child's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser);

vii. the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;

viii. the benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien's child and/or to care for any resulting children; or

ix. where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien's child had when living with the abuser;

4. the alien meets the requirements of section 627.3(b)(10)(H)3;

5. the individual responsible for the battery or cruelty does not reside in the same household as the individual subjected to the battery or cruelty during the period for which program benefits are sought;

(J) an alien child who meets all of the following conditions:

1. the alien child resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by:

A. that parent's spouse; or

B. a member of the spouse's family residing in the same household as the parent and the spouse consented to, or acquiesced in the battery or cruelty; and

C. for purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury.

Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence;

2. there is a substantial connection between the battery or cruelty and the need for the program's benefits as follows:

A. for purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

i. the benefits are needed to enable the alien child's parent to become self-sufficient following separation from the abuser;

ii. the benefits are needed to enable the alien child's parent to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien child's parent from the abuser;

iii. the benefits are needed due to a loss of financial support resulting from the alien child's parent's separation from the abuser;

iv. the benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien child's parent to lose his or her job or to earn less or to require the alien child's parent to leave his or her job for safety reasons;

v. the benefits are needed because the alien child's parent requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty;

vi. the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien child's parent's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser);

vii. the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;

viii. the benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien child's parent and/or to care for any resulting children; or

ix. where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien child's parent had when living with the abuser;

3. the alien meets the requirements of section 627.3(b)(10)(H)3;

4. the individual responsible for the battery or cruelty does not reside in the same household as the individual subjected to the battery or cruelty during the period for which program benefits or assistance are sought;

(11) "SAVE" means the Systematic Alien Verification for Entitlements automated database.

§ 627.4. Nonprofit Charitable Organizations.

A nonprofit charitable organization that provides federal, state, or local public benefits shall not be required to determine, verify or otherwise require proof of eligibility of any applicant under this article.

Subarticle 2. Eligibility

§ 628.1. Eligible Aliens.

(a) Only the following aliens are eligible for any of the programs:

(1) a qualified alien;

(2) a non-immigrant alien; and

(3) an alien paroled into the United States under 8 U.S.C. section 1182(d)(5) for less than one year.

(b) Subsection (a) does not apply to eligibility for:

(1) necessary treatment of an emergency medical condition; and

(2) the testing and treatment of symptoms of a communicable disease.

§ 628.2. Proof of Citizenship or Immigration Status.

(a) When filing an application for a program, an applicant shall declare, under penalty of perjury, to be:

(1) a citizen or other national of the United States;

(2) a qualified alien;

(3) a nonimmigrant alien; or

(4) an alien paroled into the United States under 8 U.S.C. section 1182(d)(5) for less than one year.

(b) The applicant must complete and sign form SBOC-EO-0107 (New 3/98).

(c) An applicant must submit documents that are of a type acceptable to the INS, as set forth in form SBOC-EO-0107 (Rev. 11/98) which serve as reasonable evidence of the applicant's citizenship or immigration status.

(Graphic of form not included. See Regs in library)

§ 628.3. Applicable Forms.

The Board may permit submission of the current version of a form identified in this article, or a form that supersedes one identified in this article.

§ 628.4. Time to Submit Proof of Citizenship or Immigration Status.

(a) The Board shall give an applicant who declares to be a citizen, a nonimmigrant alien, a qualified alien, or an alien paroled into the United States under 8 U.S.C. section 1182(d)(5) for less than one year, but fails to submit the documents required by subsections 628.2(c), 30 days to submit the required documents.

(b) The Board shall give an applicant who submits documents required by subsection 628.2(c) containing an alien registration or admission number, but whose immigration status is not verified by the SAVE system, 30 days to submit additional documents for verification.

§ 628.5. Verification of Immigration Status by SAVE System.

(a) An applicant's immigration status shall be verified with the INS through the SAVE system, if the Board is authorized to do so.

(b) The secondary SAVE verification method shall be to send a photocopy of each document submitted by an applicant to show immigration status to INS for verification.

(c) The secondary SAVE verification method shall be used if:

- (1) the SAVE system is unavailable;
- (2) the SAVE system instructs the user to institute secondary verification;
- (3) the documents presented include immigration status, but do not include an alien registration or alien admission number;
- (4) the SAVE record verifies the alien registration or admission number on the document submitted by the alien, but does not match other information contained in the submitted document;
- (5) the document is suspected of being counterfeit or to have been altered;
- (6) the document includes an alien registration number in the A60 000 000 series (not yet issued) or A80 000 000 series (illegal border crossing);
- (7) the document is a fee receipt from INS for replacement of a lost, stolen or unreadable INS document;
- (8) the document is one of the following:
 - (A) INS Form I-181b notification letter issued in connection with a memorandum of creation of record of permanent residence (INS Form I-181);
 - (B) an arrival/departure record (INS Form I-94); or
 - (C) a foreign passport stamped, "Processed for I-551, temporary evidence of lawful permanent residence" that

INS issued over one year before the date of the application for program benefits.

(d) If verification through the SAVE system is not available, or if the documents presented do not on their face reasonably appear to be genuine or to relate to the individual presenting them, the government entity that originally issued the document shall be contacted for verification. With regard to naturalized citizens and derivative citizens presenting certificates of citizenship and aliens, the INS is the appropriate government entity to contact for verification. The Board shall request verification by the INS by filing INS Form G-845 with copies of the pertinent documents provided by the applicant with the local INS office. If the applicant has lost his or her original documents, or presents expired documents or is unable to present any documentation evidencing his or her immigration status, the applicant shall be referred to the local INS office to obtain documentation.

(e) If the INS advises that the applicant is a citizen or a nonimmigrant alien, has immigration status which makes him or her a qualified alien, or is an alien paroled into the United States under 8 U.S.C. section 1182(d)(5) for less than one year, the INS verification should be accepted. If the INS advises that it cannot verify that the applicant is a citizen or a nonimmigrant alien, has immigration status that makes him or her a qualified alien, or is an alien paroled into the United States under 8 U.S.C. section 1182(d)(5) for less than one year, benefits shall be denied and the applicant notified pursuant to the program's regular procedures of his or her rights to appeal the denial of benefits.

§ 628.6. Manual Verification of Immigration Status.

(a) If the documents presented do not on their face appear to be genuine or to relate to the individual presenting them, the government entity that originally issued the documents shall be contacted for verification. With regard to naturalized citizens and derivative citizens presenting certificates of citizenship and aliens, the INS is the appropriate government entity to contact for verification. The Board shall request verification from the INS by filing INS Form G-845 with copies of the pertinent documents provided by the applicant with the local INS office. If the applicant has lost his or her original documents, or presents expired documents, or is unable to present any documentation evidencing his or her immigration status, the applicant shall be referred to the local INS office to obtain documentation.

(b) The type of documentation referred to the INS for verification pursuant to INS Form G-845 shall include the following:

- (1) a document that indicates immigration status but does not include an alien registration or alien admission number;
- (2) a document that is suspected to be counterfeit or to have been altered;
- (3) a document that includes an alien registration number in the A60 000 000 (not yet issued) or A80 000 000 (illegal border crossing) series;
- (4) a document that is one of the following:
 - (A) an INS Form I-181b notification letter issued in connection with an INS Form I-181 Memorandum of Creation of Record of Permanent Residence;
 - (B) an Arrival-Departure Record (INS Form I-94); or
 - (C) a foreign passport stamped "Processed for I-551, Temporary Evidence of Lawful Permanent Residence" that INS issued more than one year before the date of application for program benefits.
- (c) If the INS advises that the applicant is a citizen or a nonimmigrant alien, has an immigration status which makes him or her a qualified alien, or is an alien paroled into the United States under 8 U.S.C. section 1182(d)(5) for less than one year, the INS verification should be accepted. If the INS advises that it cannot verify that the applicant is a citizen or a nonimmigrant alien, has immigration status that makes him or her a qualified alien, or is an alien paroled into the United States under 8 U.S.C. section 1182(d)(5) for less than one year, benefits shall be denied and the applicant notified pursuant to the program's regular procedures of his or her rights to appeal the denial of benefits.

Subarticle 3. Hearings

§ 629.1. Right to Hearing.

- (a) An applicant whose application is denied under sections 628.5(e) or 628.6(c) may request a hearing.
- (b) A request for a hearing must be received by the Board within 45 days of the date the Board mailed the notification of the denial of the application.

§ 629.2. Conduct of Hearing.

- (a) The applicant shall have the burden of proof.
- (b) The standard of proof is by a preponderance of the evidence.

Article 4. Presentation of Claims to the State Board of Control

§ 630. Presentation of Claims.

There shall be presented to the Board of Control all claims for money or damages against the State:

- (a) For which an appropriation has been made or for which a State fund is available and which have been rejected by the Controller.
- (b) For which the appropriation made or fund designated is exhausted.
- (c) For which no appropriation has been made or for which no fund is available but the settlement of which has been provided for by statute or constitutional provision.
- (d) For which settlement is not otherwise provided for by statute or constitutional provision.
- (e) On express contract.
- (f) For the taking or damaging of private property for public use within the meaning of Section 19 of Article I of the Constitution.
- (g) Based upon the negligent act or omission of a state officer, servant or employee or for the dangerous condition of state property.
- (h) For any other injury for which the State is liable.

§ 631. Contents of Claims.

All claims or amendments thereto shall be filed in triplicate, shall be signed by the claimant or by a person acting on his behalf, shall be verified, and shall state the facts constituting the claim in simple concise language without resort to legal phraseology.

§ 632. Form of Claims.

All claims or amendments filed with the State Board of Control based upon subsections (a) through (f) of Section 630 shall be in substantially the following form:

(Graphic of form not included. See Regs in library)

§ 632.5. Form of Claims Involving Negligence, or the Dangerous Condition of State Property, or Other Injuries for Which the State Is Liable.

All claims or amendments filed with the State Board of Control based upon subsections (g) or (h) of Section 630 shall be in substantially the following form:

(Graphic of form not included. See Regs in library)

§ 632.6. Notice of Insufficiency.

The Attorney General or other attorney authorized to represent the State is designated to give [sic] written notice of insufficiency of any claim within the time and in the manner prescribed by Government Code Section

910.8. A copy of such notice shall be forwarded to the State Board of Control and no action will be taken by the Board on the claim for a period of 15 days after such notice is given.

§ 632.7. Time for Presenting Claim.

A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented to the Board of Control not later than the 100th day¹ after the accrual of the cause of action. A claim relating to any other cause of action shall be presented to the Board of Control not later than one year after the accrual of the cause of action.

§ 632.8. Presenting Late Claim.

(a) When due to mistake, inadvertence, surprise or excusable neglect, a claim required under Section 632.7 to be filed within 100² days after the accrual of a cause of action is not filed within such 100 day period, the claimant may present a written application to the Board for leave to present such claim. Such application must be presented within a reasonable time not to exceed one year after the accrual of the cause of action and shall state fully the reason for the delay in presenting the claim. The proposed claim shall be attached to the application and shall in form comply with these rules.

(b) Such application shall be granted or denied by the Board of Control within 45 days after its presentation to the Board.

(c) Automatic Rejection. If the application is not acted on by the Board within the time prescribed in this section, the application will be deemed rejected by the Board on the last day of the period within which Board is required to act on the application.

(d) Extension of Time. By written agreement, the applicant and the Attorney General or other attorney authorized to represent the State may extend the period within which the State Board of Control is required to act on the application.

(e) When an application for leave to file a late claim is presented to the State Board of Control pursuant to Government Code Section 911.4, the Secretary of the Board shall furnish the Attorney General or other attorney authorized to represent the State with a copy of such application and the Attorney General or other attorney authorized to represent the State may present affidavits of other evidence in opposition to the application.

¹ 100 days is incorrect— it is 6 months per GC § 911.2.

² 100 days is incorrect— it is 6 months per GC §§ 911.4 & 911.6.

(f) In reviewing the application, the Board shall consider whether the State has been prejudiced by the failure to present the claim within the time required by these rules. If the application is granted, the claim shall be deemed to have been presented to the Board upon the day that leave to present the claim was granted.

§ 632.9. Notice and Hearing.

(a) At least 10 days prior to the date set for final action by the State Board of Control, written notice of the time and place of hearing by the State Board of Control of the claim, amendment or application to file a late claim, unless waived by claimant, shall be mailed by the Board to the address, if any, stated in the claim as the address to which the person presenting the claim desires notice to be sent. If no such address is stated in the claim, the notice may be mailed to the address, if any, of the claimant as stated in the claim. No notice will be given when the claim fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.

(b) At the hearing, and in the discretion of the Board, oral testimony and written instruments may be introduced without regard to the legal rules of evidence.

(c) In reaching their decision, and when reporting to the Legislature concerning the claim, the members of the Board may state and use any official or personal knowledge they may have touching the claim.

(d) If the Board approves or recommends a claim, and no sufficient appropriation for payment thereof is available, the Board, with the approval of the Governor, shall report to the Legislature such facts and recommendations concerning the claim as it deems proper.

(e) Upon the allowance by the Board of all or part of a claim for which a sufficient appropriation exists, and the execution and presentation of such documents as the Board may require which discharge the State, its officers, agents, servants and employees, of all liability under the claim, the Board shall designate the fund from which the claim is to be paid and the State agency concerned shall pay the claim from such fund.

§ 632.10. Board Action on Claims.

(a) The Board of Control shall act on a claim presented in accordance with the rules within 45 days after the claim has been presented or, if the claim is amended, within 45 days after the amended claim is presented.

(b) Automatic Rejection. If the claim is not acted on by the Board within the time prescribed in this Section, the claim will be deemed rejected by the Board on the last day of the period within which the Board is required to act on the claim.

(c) Extension of Time. By written agreement, the claimant and Attorney General or other attorney authorized to represent the State may extend the period within which the State Board of Control is required to act on the claim. A copy of such written agreement shall be forwarded to the State board [sic] of Control by the Attorney General or other attorney authorized to represent the state.

§ 632.11. Settlement of Claims.

Where the claim is not covered by insurance the Attorney General on behalf of all state agencies, except the Department of Transportation, and the Director of the Department of Transportation on behalf of the Department of Transportation are authorized, subject to any instructions which may be issued by the Board from time to time, to investigate and recommend to the Board the disposition of all claims involving personal injury, wrongful death, and property damage.

The Attorney General on behalf of all state agencies except the Department of Transportation and the Director of the Department of Transportation are also authorized to adjust and pay all such claims where the settlement does not exceed one thousand dollars (\$1,000) and where a sufficient appropriation exists, providing the Board is presented with a statement of the basis of the claim, the amount of the settlement, and the claimant's agreement therewith, and the Board approves such settlement.

Nothing contained herein shall preclude the Board from investigating a claim by assignment to the hearing officer or otherwise or from receiving recommendations from any other governmental agency.

Article 4.1 Payroll Claims

§ 633. Submission to State Personnel Board.

All payroll claims shall be forwarded to the State Personnel Board at Sacramento.

§ 633.1. Computing Salaries. Forwarding of Pay Roll Claims.

The State Controller shall not draw a warrant for payment of any claim for salaries and wages, other than statutory salaries, unless the State Personnel Board shall have certified that:

(a) All persons whose names appear upon such pay roll claims are holding positions as provided by the State Civil Service Act and the rules and regulations prescribed thereunder, and

(b) All items and amounts claimed thereon are in accordance with the current budgetary provisions as approved by the Department of Finance.

§ 633.2. Monthly Salaries.

An employee whose salary is established on a monthly basis shall receive his monthly salary for any 21-day period in which he works 21 days or 168 hours, or for any 22-day pay period in which he works 22 days or 176 hours. For the purpose of computing the number of days or hours worked, time during which an employee is excused from working because of holidays, sick leave, vacation, compensating time off or other leave with pay shall be considered as time worked by the employee.

If an employee is required to work more than the normal amount of time in any pay period because his work schedule is other than five days a week, Monday through Friday, the extra time worked shall be credited the same as overtime. If such schedule requires him to work less than the normal amount of time, compensating time off shall be charged toward making up the deficiency.

An employee who is entitled to less than his full monthly salary for any pay period shall receive only that part of his monthly salary as the number of days he worked during the pay period bears to the total number of work days in the pay period.

§ 633.3. Preparation of Pay Roll Claims.

The pay roll presented for audit shall show:

(a) Where employees are paid on a monthly basis, the name, position occupied, period for which payment is made and the rate of pay. For example: John Smith, Carpenter, November 1-20, inclusive, at \$150 - \$100.

(b) Where employees are paid on a per diem basis, the name, position occupied, number of days employed, dates and rate per day.

(c) Where employees are paid on an hourly basis, the name, position occupied, number of hours employed each day, dates, total number of hours employed and rate per hour.

(d) Where employees of the state colleges are engaged as supervising teachers, demonstration school teachers, or in extension class or summer session instruction, the name, position occupied, number of units taught, and rate per unit shall be shown.

(e) Where the State Personnel Board, in fixing compensation in accordance with prevailing rates of wages in the locality under Government Code Section 18853, has authorized subsistence, travel, or other allowance in addition to daily or hourly rate of pay, the type, rate and duration of allowance, locations and travel involved, and any other information necessary to establish entitlement and conformity with the authorization of the Personnel Board.

§ 633.4. Pay Roll Certificate.

(a) In accordance with Section 624, each pay roll claim shall contain a certificate reading as follows:

"I hereby certify under penalty of perjury:

"That I am the duly appointed, qualified and acting officer of the herein named state agency; that the within pay roll is correct; that the work for which payment is claimed was actually performed solely for the benefit of the State on the days and during the month specified; that the individuals whose names are set forth herein were employed in accordance with law to perform such services; that all the provisions of law governing such employment have been fully complied with; that each such individual is entitled to the amount set opposite his name, unless this is a claim for reimbursement of the departmental pay roll revolving fund, in which event each such individual was entitled to and has been paid the amount set opposite his name from such revolving fund; that all deductions made herein for purposes set forth in Sections 1156, 1156.1 and 13922, Government Code, are in conformity with written authorizations of the employees concerned on file in this office

"That the persons for whom payment is requested in this pay roll who have been appointed under emergency appointments or who hold positions excluded from the state civil service by Article XXIV of the State Constitution, have, in writing, declared themselves to be citizens of the United States.

"That the persons for whom payment is requested in this pay roll have taken, subscribed and filed the oaths, including the oath set forth in Section 3103 of the Government Code, required by law.

"That the totals of the schedules and of the within pay roll as presented are as set forth therein."

(b) Each such claim shall also contain the following approval by the State Personnel Board:

"The persons named in the within pay roll are holding positions as provided in Article XXIV of the State Constitution, Sections 18570 to 19765, inclusive, Government Code, and the rules and regulations prescribed thereunder. All items and amounts claimed on the within pay roll are in accordance with the current budgetary provisions as approved by the Department of Finance. All persons named in the payroll who hold positions within the state civil service have declared themselves, in writing, to be citizens of the United States.

"The within payroll is hereby approved for payment with exceptions, if any, as noted."

(c) Each such claim presented for reimbursement of the departmental pay roll revolving fund shall be marked "Pay Roll Revolving Fund."

§ 633.5. Salary Includes All Services. Acceptance of Fees by State Officers.

The salaries fixed by law for all state officers, elective or appointive, shall be compensation in full for all services rendered in any official capacity or employment whatsoever, during their terms of office, and no such officer shall receive for his own use any fee or perquisite for the performance of any official duty.

§ 633.6. Claims for Allowances Under Retirement System.

(a) In addition to the information required under Section 622, every claim for allowances under a retirement system shall show:

(1) The amount of the similar roll for the preceding period.

(2) All additions to and deletions from the roll for said preceding period, including adjustments, changes, and authorized deductions, together with the name of the respective payee affected by each thereof.

(3) The total amount of the roll, as thus adjusted.

(4) All entries shall be carried directly to the column showing the amount to be disbursed.

(b) In accordance with Section 624, each claim for payment of claims for allowances under a retirement system shall contain a certificate reading as follows:

"I hereby certify under penalty of perjury as follows:

"That I am the duly appointed, qualified and acting officer of the herein named retirement system. That the amount of the similar roll for the preceding period is truly and correctly set forth herein. That all proper additions to, and deletions from, said roll for the previous period (including all proper adjustments, changes, and deductions) are contained in the within schedules, and that the respective amounts and payees affected, and the totals, are true and correct as set forth herein. That retirement allowances and deductions therefrom are properly payable to each and all of the claimants as previously certified, as adjusted to and including the within schedules, and that such allowances (including amounts shown as deductions therefrom) are authorized in the amount, for the period, and to the respective payees, as indicated herein, under all laws and regulations governing the retirement system. That deductions for purposes set forth in Section 20135, Government Code are in conformity with written authorizations of the persons concerned. That I have not violated any of the provisions of Sections 1090 to 1096, inclusive, Government Code.

"That warrants drawn pursuant to this claim will be delivered to the respective claimants whose right to

receive retirement allowances or deductions therefrom has been certified to the State Controller."

(c) Claims for allowances under a retirement system are excepted from the requirements of Sections 650 to 655, inclusive.

(d) At the option of the State Controller, any claim for allowances under a retirement system may be filed and audited in accordance with Board of Control rules applicable but for the adoption of this section.

§ 633.7. Pay Roll Claims Under Central Disbursement System.

Upon determination by the State Controller of an effective date for any state agency in compliance with Section 12470 of the Government Code, such agency shall submit pay roll claims in the following form and manner, and the State Controller shall prepare and make direct payment of pay rolls for such state agency on the basis thereof.

(a) An original pay roll roster shall be presented at the outset, showing names, positions, rates of pay, and other pay roll information as prescribed by the State Controller, for all employees and approved established positions (filled and unfilled) of the agency. Every claim transmitting an original pay roll roster shall constitute a continuing claim for salary payments, subject to modification as in this section provided. In addition to the information required under Section 622 (excepting subsection (b) thereof), each claim transmitting an original pay roll roster shall contain a certificate in accordance with Section 624, reading as follows:

"I hereby certify under penalty of perjury as follows:

"That I am the duly appointed, qualified and acting officer of the herein named state agency. That the names, positions, amounts of salary payable, and other statements contained herein and in the attached documents, are true and correct. That the attached constitutes the 'original pay roll roster' of the herein named state agency. That salary payments are properly and lawfully payable to every employee as certified herein, and that such salary payments are authorized each month from and after the effective date stated herein in the respective amounts and to the respective employees, as indicated, under all laws, rules, and regulations applicable, except as may be modified by pay roll roster change filed by this agency with the State Controller. That the individuals whose names are set forth herein are lawfully employed and all provisions of law governing such employment have been fully complied with. That all deductions listed herein for purposes set forth in Sections 1156, 1156.1 and 13922 (or 1153), Government Code, are in conformity with written authorizations of the employees concerned on file in this office. That the persons for whom payment is authorized herein have taken, subscribed and filed the oaths,

including the oath set forth in Section 3103, Government Code, required by law and have in writing declared themselves to be citizens of the United States. That all positions included herein, whether filled or unfilled, have been properly established and approved by the State Personnel Board and Department of Finance, and are in conformity with current budgetary provisions.

"That I have not violated any of the provisions of Article 4 of Division 4 of Title 1 (Sections 1090 to 1097, inclusive) of the Government Code."

(b) The state agency shall promptly notify the State Controller of every lawful addition to, deletion from, or change in the original pay roll roster, or of any exception to the normal pay amounts specified in such roster, with respect to any employee or position during any pay period. Such notification shall be by "pay roll roster change" filed with the Controller. Each pay roll roster change, when certified by an authorized person of the agency, shall constitute a continuing authorization to the Controller to modify the original pay roll roster in accordance therewith except as may be further modified in like manner. Each pay roll roster change shall contain the following certification:

"The foregoing additions to, deletions from, or changes in the original pay roll roster of the herein named state agency are true, correct, and in accordance with law. As modified to date by pay roll roster changes filed with the State Controller, to and including the within, said original pay roll roster is true, correct, and in accordance with law. All persons added to the pay roll roster, or whose status is modified, by this pay roll roster change were employed in approved established positions and have, if required by law, taken the oaths, including the oath set forth in Section 3103 Government Code."

(c) The state agency shall submit, and each payroll prepared and paid by the State Controller under this section shall be supported by attendance reports from the agency in such form and manner as prescribed in the Uniform State Payroll System installed under Section 12470 of the Government Code.

(d) Certification to the State Controller by any state agency in the manner provided in (a) or (b), and (c), above, of the employment of any person, shall constitute authorization to the Controller to make salary payment of not to exceed one month's salary to such person without approval of the employment by the State Personnel Board. Subsequent salary payments shall not be made by the Controller to any such employee unless and until the employment has been approved by the State Personnel Board.

(e) Payroll claims under this section are excepted from the requirements of Sections 651, 653 and 654.

§ 633.8. Agencies Not Included in Central Disbursement System.

Any state agency or unit thereof which is not includable in the Uniform State Payroll System under Government Code Section 12470 may submit its payroll claims to the State Controller in the form and manner prescribed in Section 660. In such event:

- (1) All appropriate forms, procedures and regulations adopted by the State Controller in connection with the operation of the Uniform State Payroll System are applicable.
- (2) All provisions of Section 660 are applicable except that subdivision (d) thereof shall not apply, and each claim transmitting an original payroll roster shall contain the following certificate in lieu of the form of certificate prescribed in subdivision (a) of Section 660:

"I hereby certify under penalty of perjury as follows:

"That I am the duly appointed, qualified and acting officer of the herein named state agency. That the names, positions, amounts of salary payable, and other statements contained herein and in the attached documents, are true and correct. That the attached constitutes the 'original payroll roster' of the herein named state agency. That salary payments are properly and lawfully payable to every employee as certified herein, and that such salary payments are authorized each month from and after the effective date stated herein in the respective amounts and to the respective employees, as indicated, under all laws, rules, and regulations applicable, except as may be modified by payroll roster change filed by this agency with the State Controller. That the individuals whose names are set forth herein are lawfully employed and all provisions of law governing such employment have been fully complied with. That all deductions listed herein for purposes set forth in Sections 12420 and 3922 (or 1153), Government Code, are in conformity with written authorizations of the employees concerned on file in this office. That the persons for whom payment is authorized herein have taken, subscribed and filed the oaths, including the oath set forth in Section 3103, Government Code, required by law and have in writing declared themselves to be citizens of the United States.

"That I have not violated any of the provisions of Article 4 of Division 4 of Title 1 (Sections 1090 to 1097, inclusive) of the Government Code."

§ 633.9. Payroll Deductions for Charitable Contributions.

- (a) Any state officer or employee may authorize monthly deductions from his salary or wages for payment of charitable contributions pursuant to a plan approved by the Board of Control to the agency handling the principal combined fund drive in any area.

- (1) The principal combined fund drive in any area shall be the public donation appeal of an area which combines in one specific annual drive the greatest support for charitable agencies that depend upon public subscriptions for support.

- (2) In deciding whether an organization conducts the principal combined fund drive in an area, the Board of Control will consider:

- (A) The number of charitable agencies in the area which rely on the drive for their support.

- (B) The number of dollars raised in the area during the last completed fund drive, and

- (C) The percentage of such dollars disbursed to charitable agencies as a result of the drive.

- (b) Applications submitted by agencies handling principal combined fund drives to the Board of Control for approval of plans, shall be in the form prescribed by the Board and shall include the following:

- (1) The names of the charitable agencies included in the fund drive.

- (2) The boundaries of the area.

- (3) A certification under penalty of perjury that the organization is in compliance with the provisions of the Fair Employment Practice Act, Part 4.5, commencing with Section 1410, of Division 2 of the Labor Code. A separate certification shall be submitted by each affiliated member beneficiary of the principal combined fund drive.

- (4) Agreement to transmit contributions, as designated by the employee, to any charitable organization qualified as exempt organizations under Section 23701(d) of the California Revenue and Taxation Code, or paragraph (3) of subsection (c) of Section 501 of the United States Internal Revenue Code of 1954, less fundraising and administrative expenses determined by the Board of Control.

- (5) Agreement that all state employees in the principal combined fund drive area will be provided, during the fund drive, in addition to the payroll authorization form:

- (A) A list of non-affiliated, charitable organizations which have been recognized by the Board of Control in the fund drive area.

- (B) Information as to fundraising and administrative cost charged by the principal combined fund drive to nonaffiliated organizations designated by the employee, as determined by the Board of Control.

- (C) A form on which the state employee may designate amounts to be contributed to affiliated and non-affiliated beneficiaries.

- (6) An agreement to pay, in the manner and time determined by the State Controller, the additional cost to

the State of making deductions and remitting the proceeds.

(7) Such other provisions deemed necessary by the Board of Control or the State Controller.

(c) Charitable organizations which are not affiliated beneficiaries of the principal combined fund drive may apply to the Board of Control for inclusion on the listing of approved non-affiliated organizations which the principal combined drive is required to provide to each employee solicited. Such applications shall be in the form prescribed by the Board of Control and shall include the following:

(1) The name of the organization.

(2) The boundaries of the area in which the organization normally solicits public contributions.

(3) The name of the principal combined fund drive recognized by the Board of Control for the area defined above, in which the organization applies to be included.

(4) An agreement to pay to the principal combined fund drive agency the amount necessary to reimburse the principal combined fund drive agency for fundraising and administrative expenses, as determined by the Board of Control.

(5) A certification that the organization is qualified as an exempt organization under Section 23701(d) of the Revenue and Taxation Code, or paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954.

(6) A certification under penalty of perjury that the organization is in compliance with the provisions of the Fair Employment Practice Act, Part 4.5, commencing with Section 1410 of Division 2 of the Labor Code.

(7) Such other provisions deemed necessary by the Board of Control or the State Controller.

(d) An organization recognized pursuant to Section (c) shall be included in the listing in subsequent fund drives upon notification to the Board of Control, at least 90 days before the commencement of each annual fund drive, certifying that the organization's status and conditions of approval remain the same as indicated in the original application.

(e) Procedures for payroll deductions for charitable contributions will include the following:

(1) Employee authorization must be in writing upon the form prescribed by the State Controller, signed by the officer or employee, and submitted to his employing agency, which shall forward the employee authorizations to the State Controller.

(2) The form on which a state employee may designate contributions to an organization affiliated with or not

affiliated with the principal combined fund drive shall be in triplicate, one copy each for:

(A) The employee,

(B) The employee's designated beneficiary agency, and

(C) The principal combined fund agency.

(3) Monthly deductions may be authorized in any amount of \$2.00, or more.

(4) State officers or employees may not authorize more than one payroll deduction for charitable purposes to be in effect at the same time.

(5) An authorization or cancellation shall not be effective as to any payroll period unless received in sufficient time for the State Controller to process and enter or cancel the deduction on the payroll for that period.

(6) The State Controller may combine authorized deductions for employee association dues and authorized charitable deductions in his records.

Article 4.2. State Contributions Under State Employees' Medical and Hospital Care Act

§ 634. Claims for Payment.

(a) Authorization for contributions by the State under the State Employees' Medical and Hospital Care Act shall be certified to the State Controller as follows:

"I hereby certify under penalty of perjury as follows:

"That I am the duly appointed, qualified and acting officer of the herein named state agency; that the foregoing action is in accordance with the provisions of Part 5, Division 5 of Title 2 of the Government Code; that payment by the State as provided by Sections 22825 and 22827 through 22829, inclusive, of the Government Code is hereby approved."

(b) Upon certification of any payroll roster change which may or may not affect cancellation of enrollment under the State Employees' Medical and Hospital Care Act, authorization for contributions by the State shall be certified to the State Controller as follows:

"Payment by the State when required under Sections 22825 and 22827 through 22829, inclusive, of the Government Code is hereby approved."

(c) Each authorization shall constitute a continuing claim for payment of the State's contribution until modified by a subsequent authorization filed with the State Controller pursuant to this section.

(d) Claims for these payments are exempt from Sections 622, 623, and 650 through 655, inclusive.

Article 5. Claims of Persons Erroneously Convicted of Felonies

§ 640. Presentation of Claim.

Claims on behalf of persons erroneously convicted of felonies shall be filed in duplicate and shall be in substantially the following form:

BEFORE THE BOARD OF CONTROL OF THE STATE OF CALIFORNIA

In the Matter of the Claim of)

_____)

against the State of California.)

The undersigned Claimant makes claim against the State of California in the sum of _____ dollars, and in support of said claim represents as follows:

1. (Name of the felony for which he was convicted, title of the court in which the conviction was had, the date of conviction and length of sentence imposed.)
2. (State prisons in which the sentence was served, length of time incarcerated and the dates thereof.)
3. (Facts showing (a) that the crime with which he was charged was either not committed at all, or, if committed, was not committed by him, (b) that he neither intentionally nor negligently contributed to his arrest and conviction.)
4. (Facts showing the pecuniary injury sustained by him through his erroneous conviction and imprisonment.)
5. (The date of whichever is the latest of the following acts (a) the judgment of acquittal, (b) the discharge, (c) the grant of the pardon, or (d) the release from imprisonment.)

Respectfully submitted.

By _____

Dated: _____

Address

STATE OF CALIFORNIA,)
) ss.

County of _____)

_____, being by me first duly sworn, deposes and says: That he is the Claimant above named, that he has read the foregoing claim and knows the contents thereof, that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters that he believes it to be true.

Subscribed and sworn to before me this ____ day of _____, 19____.

Notary public in and for the County of _____, State of California.

(Sections 4900 to 4906 Penal Code.)

§ 641. Burden of Proof.

In reaching its determination of the merits of the claim, claimant's mere denial of commission of the crime for which he was convicted; reversal of the judgment of conviction on appeal; acquittal of claimant on retrial; or, the failure of the prosecuting authority to retry claimant for the crime, may be considered by the Board but will not be deemed sufficient evidence to warrant the Board's recommendation that claimant be indemnified in the absence of substantial independent corroborating evidence that claimant is innocent of the crime charged. Testimony of witnesses claimant had an opportunity to cross-examine, and evidence to which claimant had an opportunity to object, admitted in prior proceedings relating to the claimant and the crime with which he was charged, may be considered by the Board as substantive evidence. The Board may also consider any other information that it may deem relevant to the issue before it.

Article 5.2. Hearings for Indemnification of Citizens Benefiting the Public and Indemnification of Victims of Crime

Subarticle 1. General Provisions

§ 647.1. Applicability.

(a) This article applies to:

- (1) an application for assistance to victims of crimes under Government Code sections 13959-13969.4; and
- (2) an application for indemnification by persons benefiting the public under Government Code sections 13970-13974.1.

§ 647.2. Applicable Regulations.

If there is any inconsistency or conflict between the provisions of article 2.5 and this article, the provisions of this article shall apply.

§ 647.3. Definitions.

(a) As used in this article:

- (1) "Attorney" shall mean a member of the California bar; and
- (3) "Party" shall mean an applicant.

Subarticle 2. Pre-Hearing Procedure

§ 647.20. Right to Hearing.

(a) An applicant may request a hearing to contest any of the following actions:

- (1) a staff recommendation that the board deny finding good cause for the late filing of an application;
- (2) a staff determination that an application is not complete; and
- (3) a staff recommendation that the board deny, in whole or in part, an application.

§ 647.20.1 Denial of Hearing for Failure to State Basis to Grant Relief.

(a) The Executive Officer may deny a request for a hearing if it fails to state a basis upon which the applicant may be granted relief.

(b) Prior to denying a request for a hearing under subsection (a), the applicant shall be:

- (1) notified of the reason for denying the request for a hearing; and
- (2) given thirty days to submit written materials that either refute the reason for the denial, or show that there is a basis upon which relief may be granted.

(c) The Executive Officer shall review written materials submitted under subsection (b)(2), and any other pertinent materials, and prepare a written decision that complies with section 619.1.

(d) A copy of the Executive Officer's decision shall be mailed or delivered to the applicant.

(d) [sic] The procedure in this section is a hearing under section 617.6

(1) An applicant may object to the use of the informal hearing process upon receipt of the notice under subsection (b)(1).

§ 647.21. Notice of Hearing.

The board shall, if practicable, schedule the hearing in a location convenient to the applicant.

§ 647.22. Information About Hearing Procedure.

The board shall provide information about the hearing rules and procedures at the hearing to applicants and representatives.

§ 647.23. Representation of Applicant.

(a) A representative shall provide written disclosure to an applicant if the person represents any other person or entity with a financial interest in the outcome of the application.

(1) The applicant must provide written acknowledgment of receiving the disclosure and written consent to the representation.

(2) The representative's written disclosure and the acknowledgment and consent shall be available upon request by the board, board staff, or the hearing officer.

(3) A person who does not have a written disclosure, acknowledgment of disclosure and consent to representation as required by this section shall be prohibited from representing an applicant at a hearing.

(b) No person shall charge, receive or collect any amount from an applicant for services rendered in connection with any proceeding under this article except as provided in Government Code section 13965(d).

(c) The board shall not pay any fees for representation by a person who is not an attorney.

§ 647.24. Access to Application Information.

(a) A representative may receive access to personal information about an applicant in connection with a hearing if:

- (1) the applicant authorizes it in writing;
- (2) an original authorization is submitted to the board;
- (3) the applicant is entitled to have access to the information; and

(4) access is authorized by Government Code section 13968(d), if applicable.

(b) Written authorization under this section must include:

- (1) the name, address and phone number of the applicant;
- (2) the name, address and phone number of the representative;
- (4) the signature of the applicant;
- (5) the date on which the authorization was signed;
- (6) a description of the information or documents that are authorized to be released; and
- (7) the date on which the authorization expires.

(c) An authorization under this section is valid for no longer than three years after the date it was signed.

(d) "Personal information" shall have the same meaning as in Civil Code section 1798(a).

(e) Members of the public may not inspect applications or application materials that may be withheld under the Public Records Act, Government Code section 6250-6270 unless the inspection or disclosure is authorized by this section.

§ 647.25. Objection to Informal Hearing Process.

An applicant must object to having an informal hearing at the time the applicant confirms appearance at a hearing.

§ 647.26. Request for Continuance.

(a) A request for a continuance of a hearing must be in writing and submitted to the Executive Officer as soon as the need for the request is known to the party.

(b) A request for a continuance that is made less than ten working days prior to the date of the hearing may be granted only if good cause exists.

Subarticle 3. Hearing Procedure

§ 647.30. Conduct of Hearing.

(a) The Executive Officer or hearing officer shall determine whether the hearing shall:

(1) permit the presentation of oral evidence under section 617.7; or

(2) be limited to the submission of written materials under section 617.6.

(b) The determination made under subsection (a) shall be based on the following factors:

(1) complexity of legal or factual issues;

(2) necessity to evaluate credibility of witnesses for a proper determination of issues;

(3) party's representation by legal counsel; and

(4) any other factor likely to affect a just and proper determination of the issues.

(c) Section 617.5 governs hearings held under this article that are conducted by the board.

§ 647.31. Evidence.

(a) The technical rules of evidence relating to evidence and witnesses shall not apply.

(b) The board or hearing officer may rely on evidence that is:

(1) reliable; and

(2) the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule that might make improper the admission of the evidence over objection in a civil action.

(c) Objections to and arguments about evidence may be considered when determining the weight to be given to the evidence.

(d) The board or hearing officer may rely on written reports and other information received from the law enforcement agency or other governmental agency responsible for investigating the crime.

(e) The board or hearing officer shall review and consider:

(1) the application for assistance;

(2) the report and recommendation of staff;

(3) evidence obtained by staff;

(4) evidence submitted by the applicant;

(5) testimony provided by the applicant; and

(6) testimony provided by witnesses.

(f) The board or hearing officer may take official notice under section 617.8 of the board's written policies.

§ 647.32. Burden of Proof.

(a) The applicant shall have the burden of proof on all issues necessary to establish eligibility.

(b) The board shall have the burden of proof on all issues necessary to disqualify an applicant under Government Code section 13964, subsections (b), (c) or (d).

(c) The standard of proof is a preponderance of the evidence.

§ 647.33. Exclusion of Public.

(a) The board or hearing officer may exclude members of the public from a hearing if the application being considered is the result of:

(1) a crime against a minor;

(2) a crime of sexual assault; or

(3) a crime of domestic violence.

(b) The board or hearing officer shall not exclude:

(1) board members;

(2) the hearing officer;

(3) board staff;

(4) the applicant;

(5) a minor applicant's parents or guardians;

(6) the applicant's representative;

(7) witnesses; and

(8) other persons of the applicant's choice to provide assistance to the applicant during the hearing.

(c) The board or hearing officer shall not exclude persons under this section if the applicant or the applicant's representative requests that the hearing remain open to the public.

§ 647.34. Copies of Submitted Materials.

A person appearing in a hearing shall provide five legible copies of any written material to be submitted into the record or introduced into evidence at the hearing.

§ 647.35. Failure to Appear or Proceed.

(a) If an applicant or representative fails to appear at a hearing, or fails to proceed, the board or hearing officer may base its decision on any material listed in section 647.31(e)(1)-(4).

§ 647.36. Issues for Hearing on Application to Indemnify Citizens Benefiting the Public.

(a) An applicant must prove all of the following:

(1) the nature of the crime committed by the apprehended criminal or prevented by the action of the applicant; or

(A) the nature of the action of the applicant in rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe; and

(B) the circumstances involved;

(2) the applicant's action substantially and materially contributed to:

(A) the apprehension of a criminal;

(B) the prevention of a crime; or

(C) the rescue of a person in immediate danger of injury or death due to fire, drowning, or other catastrophe;

(3) as a direct consequence of subdivision (a)(2), the applicant suffered:

(A) personal injury;

(B) property damage; or

(C) death; and

(4) the extent of the injury or damage under subdivision (a)(3) for which applicant was not compensated from any other source.

§ 647.37. Notice and Public Comment on Proposed Decision.

Section 619.4 shall not apply to hearings under this article.

Article 5.5. Indemnification of Citizens Benefiting the Public

§ 648.1 Time for Presenting Claims.

There shall be presented to the Board all claims filed by citizens who have benefited the public through their actions as "good samaritans" to the people around them. A claim filed under this article shall be presented to the State Board of Control not later than one year after occurrence of the injury or damage. A claim filed after such shall not be considered unless the Board determines that, for good sufficient reason, the claim was not filed within said period.

§ 648.2. Contents of Claims.

All claims shall be filed in duplicate, shall be signed and verified by the claimant, or claimant's parent or guardian if claimant is a minor, and shall state the facts constituting the claim in simple, concise language. In the event the claim is filed on behalf of the claimant by a law enforcement or public safety agency, the claim shall be signed by such agency and need not be verified.

§ 648.3. Form of Claims.

All claims or amendments filed with the State Board of Control under this article shall be filed on forms, (identified as Form BC-VOC-100 -APPLICATION FOR VICTIM OF CRIME COMPENSATION), provided by the Board.

§ 648.4. Disallowance.

A claim for indemnification will not be allowed if the crime prevented, or the crime committed by the criminal was against the person or property of the person who prevented the crime, apprehended the criminal, or who substantially and materially assisted a peace officer for this purpose.

§ 648.5. Indemnification.

The maximum amount of any claim the State Board of Control shall approve for payment shall not exceed the amount necessary to indemnify or reimburse the claimant for:

(a) The actual value of property damaged or destroyed, or the cost of repairing such property.

(b) Necessary expenses incurred for hospitalization or medical treatment, loss of wages, or other necessary expenses directly related to the injury or death. If continued hospitalization or medical treatment is

necessary, a partial award may be made and the claim subsequently reconsidered for the purpose of recommending an additional award.

Article 5.6. Indemnification of Victims of Crime

§ 649. Definitions

(a) As used in this article:

(1) "Applicant" means a person submitting either an application as defined in subsection (a)(2) or a supplemental claim as defined in subsection (a)(23).

(2) "Application" means an initial application for assistance in the Victims of Crime program under Government Code sections 13959-13969.4.

(3) "Board" means the State Board of Control.

(4) "Certification under penalty of perjury" or "upon information and belief" as applied to the filing of an application or supplemental claim means a single signature under penalty of perjury or information and belief as required to certify that the contents of the application or supplemental claim are true and correct within the knowledge or belief of the applicant.

(5) "Code" means the California Government Code.

(6) "Collateral benefits" shall include but not be limited to the following types of benefits:

(A) All forms of private and public insurance benefits paid to or on behalf of the insured victim, the victim's survivors, or derivative victim, including medical, disability, wage loss, liability and casualty insurance including vehicle, commercial and residential insurance.

(B) All forms of public and private assistance paid to, or on behalf of, the victim, the victim's survivors, or derivative victim, including Medi-Cal, social security, state disability insurance, Worker's Compensation and Medicare.

(C) Any restitution paid by the criminal perpetrator directly to the victim or his or her survivors whether collected by public agencies and paid over to the recipient or collected directly by the recipient.

(7) "Denial of the claim" as used in Section 13962(b) of the code and as construed for purposes of the board's hearing process means a preliminary determination and recommendation for disallowance by board staff and shall not be construed to mean a final administrative decision following a hearing by the board to deny the application or supplemental claim.

(8) "Derivative victim" means the same as in Government Code section 13960(a)(2).

(9) "Direct cash payment" as used in Section 13965(a)(1) of the code shall be those payments sent directly to providers when there is no objection by the victim or

derivative victim, or when good cause is demonstrated, notwithstanding a victim's or derivative victim's objection.

(10) "Family member" means a person who is related to the victim at the time of the qualifying crime by blood, marriage, or adoption.

(11) "File" or "filed" as it applies to an application or supplemental claim for VOC benefits means submitting the application or supplemental claim to the board or a joint powers victim witness center. An application or supplemental claim shall be deemed filed with the board or a joint powers victim witness center on the date that the application or supplemental claim is postmarked by the United States Postal Service or other private carrier postage prepaid and properly addressed, or on the date that it is personally delivered to the board or a joint powers victim witness center.

(12) "Fund" means the Restitution Fund as set forth in Government Code section 13960.1.

(13) "Hearing" means the same as under article 2.5 of these regulations.

(14) "Injury" means the same as in Government Code section 13960(b).

(15) "Joint powers victim witness center" means an agency under contract with the board to process applications under Government Code section 13962(d).

(16) "Law enforcement agency" means:

(A) an agency authorized to investigate or prosecute violations of law, including but not limited to:

1. a city police department;
2. a county sheriff's department;
3. a district attorney's office;
4. the California Highway Patrol; and
5. the Office of the California Attorney General.

(B) an agency from another state that investigates or prosecutes violations of law that are comparable to agencies listed in subsection (a)(16)(A); and

(C) federal agencies that investigate or prosecute violations of law.

(17) "May" means that the conduct or requirement is permissive and discretionary.

(18) "Qualifying crime" means a crime as defined in Government Code section 13960(c) that resulted in one of the following:

- (A) injury to the victim;
- (B) threat of injury to the victim; or
- (C) the death of the victim.

(19) "Related to the victim by blood, marriage or adoption" means:

(A) the victim's spouse;

(B) relatives within the 4th degree of the victim or the victim's spouse as follows:

1. first degree relatives include parent and child;
2. second degree relatives include grandparent, brother, sister, and grandchild;
3. third degree relatives include great-grandparent, uncle, aunt, nephew, niece, and great-grandchild;
4. fourth degree relatives include great-great- grandparent, great uncle, great aunt, first cousin, grandnephew, and grandniece;

(C) the spouse of a person described in subsection (a)(19)(B); or

(D) the victim's fiancé or fiancée.

(20) "Resident of California" means the person's place of residence is California as determined by one of the following:

(A) Government Code section 244 for adults; and

(B) Welfare and Institutions Code section 17.1 for minors.

(21) "Shall" means that the conduct or requirement is mandatory and not discretionary.

(22) "State" means the District of Columbia, the Commonwealth of Puerto Rico and any other possession or territory of the United States.

(23) "Supplemental claim" means a request for assistance submitted after the application is received.

(24) "Threat of physical injury" means conduct that meets both of the following:

(A) a reasonable person would feel threatened in the same circumstances as the victim; and

(B) a reasonable person in the same circumstances as the victim would believe both of the following:

1. the threat would be carried out; and
2. physical injury would result if the threat were carried out.

(25) "Victim" means a person who sustained injury or death as a direct result of a qualifying crime and is one of the following:

(A) a resident of California;

(B) a member of the military stationed in California;

(C) a family member living with a member of the military stationed in California; or

(D) a nonresident of California who is a victim of a qualifying crime occurring within California if the board determines that federal funds are available for compensation of victims of crime.

(26) "VOC" means the Victims of Crime program as specified in Title 2, Division 3, Part 4, Chapter 5, Article

1 of the Government Code, commencing with Section 13959.

(27) "Water vehicle" means the same as "vessel" as defined in Harbors and Navigation Code section 651(aa).

(28) "Witnessed the crime" as used in Section 13960(a)(2)(D) of the code means actual physical presence at the scene of the qualifying crime such that the person was a percipient witness to the qualifying crime.

(29) "Zero award" means a determination of eligibility for assistance that does not involve a determination concerning monetary assistance for any pecuniary loss.

§ 649.1. Time for Presenting Applications.

(a) A victim or derivative victim of a qualifying crime pursuant to Government Code section 13960 shall file the application for VOC assistance within one year of the date that the qualifying crime occurred or one year after the victim attains the age of 18 years, whichever is later.

(b) An application filed after the expiration of the period of limitations set forth in paragraph (a) of this section shall not be accepted. If: (i) The application is filed within three years of the date of the qualifying crime or three years after the victim attains the age of 18 years, whichever is later; or (ii) The application is filed on or before October 3, 1994, the applicant and his or her representative will be notified that the application has not been filed in a timely manner and that they have a right to petition the board for relief on grounds that good cause exists for the late filing as specified in Section 13961(c) of the code. Petitions for relief on such grounds shall be in the form of a written statement signed under penalty of perjury that sets forth the reasons why the applicant was unable to file his or her application within the one year period of limitations specified by Government Code section 13961(c).

(c) Upon a timely petition for relief under subsection (e), the board may either grant relief upon the recommendation of VOC staff, or the board shall schedule a hearing to determine the existence or nonexistence of good cause and shall notify the applicant and his or her representative of the time and place of the hearing.

(d) In all cases the determination by the board as to the existence or nonexistence of good cause shall constitute the final administrative determination on the issue, subject only to a proper motion for reconsideration upon a showing of new and additional evidence not reasonably available at the time of the initial hearing. Nothing in this section shall be construed to prevent an applicant or his or her representative from filing the above stated declaration and petition for relief upon a showing of good cause simultaneously with the late application.

(e) A petition for relief from the period of limitations on grounds of good cause shall be filed with the board in writing not more than 30 days following the date notice is mailed to the applicant and his or her representative of the late filing, and shall include the statement under penalty of perjury as specified in subsection (b). An applicant failing to petition for relief in writing within the 30 days set forth herein shall have his or her application returned and shall be deemed to have waived any right to relief from the period of limitations.

(f) An applicant seeking relief from the period of limitations on the filing of a claim may, with his or her petition for relief and accompanying statement, include any corroborating documents which serve to verify the stated justifications for late filing.

(g) For purposes of the period of limitations as stated herein, the timely filing of an application, signed and dated, including the name, address and telephone number of the applicant, and the victim if different, prior to the expiration of the period of limitations shall be sufficient to perfect an application as against the period of limitations.

(h) If the application as filed is deemed to be incomplete, it shall be returned to the applicant in accordance with the terms of Section 13962(a) of the code and the period of limitations shall be deemed suspended during the 30 days specified in that section as well as during any period pending a hearing by the board as set forth therein. If no action is taken by the applicant on the application during the 30 days as specified in the code, the application shall be deemed abandoned and the period of limitations shall again commence to run.

(i) An incomplete application returned to the applicant with notice as to the deficiency as specified in Section 13962(a) shall be deemed received by the applicant five days after it is deposited in the United States mail properly addressed and postage prepaid. Return of information sufficient to complete the application shall be deemed filed on the date postmarked by the United States Postal Service or other carrier, postage prepaid and properly addressed.

§ 649.1.1. Timely Filing of Application for Derivative Victim.

(a) The period of limitations for filing an application under section 649.1 shall be tolled when a derivative victim is listed on an application that was timely filed under section 649.1 by or on behalf of a victim of the same qualifying crime.

(b) In order for the period of limitations for filing an application under section 649.1 to be tolled under subsection (a), the following information shall be provided about the derivative victim with the application

filed by or on behalf of a victim of the same qualifying crime:

(1) name;

(2) date of birth;

(3) sex;

(4) social security number;

(A) The derivative victim's social security number is mandatory, authorized by Government Code section 13961(d)(5), and will be used for identification purposes.

(5) address; and

(6) relationship to victim or other facts that show eligibility for assistance as a derivative victim.

(c) Board staff need not review, verify, or act upon an application under Government Code section 13962 from a derivative victim whose period of limitations for an application under section 649.1 was tolled under subsection (a) until a request for monetary assistance or reimbursement is submitted by or on behalf of the derivative victim.

§ 649.2. Third Party Applications.

Under the provisions of Government Code Section 13960(a) (1) "victim" shall not include an "individual" who merely provides medical or medically related services, funeral and/or burial services, estates, or corporations. Further, the aforementioned providers, estates, or corporations shall not file claims for indemnification with the Board. All such expenses shall be paid based upon the submission of such expenses through the particular qualifying victim or his or her representative.

§ 649.3. Authorized Indemnification.

(a) Any cash payments made in response to an application or supplemental claim, arising out of the same crime, shall not exceed the monetary limits permitted by statute for a single application filed pursuant thereto.

(b) Personal Property. Except as provided for in Government Code Section 13960, the Board shall not indemnify a victim for loss of money or loss or damage to personal property sustained in the crime giving rise to the application.

(c) Rehabilitative Services. Cash payments for job retraining or similar employment-oriented services will be paid to or on behalf of the person sustaining the physical injury, or in the event of his death or continuing disability, only to or on behalf of those persons who were directly dependent on him for their major support. Persons requesting cash payment for rehabilitative services must clearly indicate the type of services or retraining

contemplated, the intended provider of the services, the cost thereof, and the need for the services. The applicant must also certify, to the satisfaction of the Board, that such assistance is not available from some other tax-supported program.

§ 649.7. Duty of Local Law Enforcement Agencies.

Notice of the Victims of Crime Act shall be given by local law enforcement agencies either in person or by mail, or in conjunction with local victim witness assistance centers, to all victims of crimes or their dependents at the time of the incident or as soon as possible thereafter. The notice as required by Government Code Section 13968(c) shall be given in accordance with the written procedures developed by the agency pursuant to Section 649.8 of this article. In addition, new officers shall be advised by their superiors upon entering service of the particulars of the VOC Program. Instruction concerning the program shall be made a part of the training curriculum for all trainee officers.

§ 649.8. Victims of Crime Liaison Officer.

Each local law enforcement agency shall designate a Victims of Crime Liaison Officer. The State Board of Control shall be advised of the name, business address and telephone number of the person appointed. In carrying out the agency's responsibility under California Government Code Section 13968(c) and Section 649.7 of this article, the Liaison Officer shall devise and implement written procedures whereby victims, or their dependents or family, are notified and provided forms for filing under the VOC Program. These procedures shall be available for examination, upon request, by the board. It shall also be the responsibility of the Liaison Officers or their designees to respond to inquiries from interested persons concerning procedures for filing a claim under this program. Liaison Officers or their designees shall provide to interested persons applications supplied by the board explaining the VOC Program.

§ 649.9. Complete Application.

Applications for assistance as specified in Section 13961 of the code shall be deemed to be complete within the meaning of Section 13962(a) of the code only if:

(a) The applicant provides all information as directed in the instructions to, and as elicited on, the application which the board shall require to be certified under penalty of perjury or upon information and belief. As part of the application the board shall require the following information:

(1) The name, residence address, and if different, mailing address, social security number, date of birth and

telephone number of the applicant seeking restitution from the Fund.

(2) A designation as prescribed on the application as to whether the applicant is a victim or derivative victim, or in the event of a death caused by a crime, a person who legally assumed the obligation, or who voluntarily paid the medical or burial expenses incurred as a direct result of the qualifying crime (Section 13965(a)(6) of the code).

(3) If the person signing the application as the applicant is a person other than the actual victim or derivative victim seeking assistance, some designation as to the legal authority of such person to apply for benefits on behalf of the victim or derivative victim (e.g. parent or legal guardian for a child; or court appointed conservator for adults adjudicated to be incompetent.)

(4) A description of the date, nature and circumstances of the qualifying crime.

(5) Except in the case of a request for "zero awards," a complete statement of losses and reimbursements directly related to the qualifying crime including but not limited to the cost of medical care or burial expense, the loss of wages the victim has incurred to date, or the loss of support the derivative victim has incurred to date, for which they claim assistance. This statement shall constitute the "financial statement" as required by Section 13961 (e)(2) of the code. This statement shall include the date or dates that medical, mental health or other professional services were provided to the victim or derivative victim and a description of the services provided along with a statement that the services were in fact received and that such services were required as a direct result of the qualifying crime and for no other reason. If mental health psychotherapy services were provided, the statement shall include a designation as to whether any counseling or psychotherapy provided was in an individual, family or group setting.

(6) A signed authorization permitting the board or a joint powers victim witness center, or both, to verify the contents of the application.

(7) If the applicant is represented by an attorney or other person, the name, address and telephone number of such representative.

(8) A statement whether the victim, the victim's survivors, or the derivative victim have commenced or intend to commence a civil action to recover monetary damages from the perpetrator or perpetrators of the qualifying crime or any other parties in connection with the qualifying crime, along with the name, telephone number and address of any attorney representing the applicant in such civil proceedings.

(9) A statement disclosing all collateral benefits including any private or public insurance or benefits payable from private or public programs of assistance for which the

victim, the victim's survivors, or the derivative victim have applied or for which they may be eligible.

(b) In addition to the information as specified in subparagraph (a) above, applicants seeking types of assistance as set forth in Section 13965 of the code shall provide the following information relative to each category of assistance claimed:

(1) If medical or mental health expenses are claimed to have been incurred as a direct result of the qualifying crime, an itemized statement from the professional provider for all medical or mental health expenses incurred as of the date of the application including the license number of the professional certificate issued by the State of California or other jurisdiction to the medical or mental health practitioner providing the service as well as his or her business address and telephone number. Providers of services who are authorized by law to offer such services as part of their on-going business activity, but who are not required to obtain a professional or occupational license must provide either their social security number, or their Federal Employer Identification Number.

(2) If loss of income is claimed to have occurred as a direct result of the qualifying crime, the applicant shall produce evidence of income loss as well as a statement of disability from the treating medical or mental health provider.

Evidence of loss of income may include but not be limited to, documentation of earnings immediately preceding the date of the qualifying crime such as copies of all wage check stubs for periods immediately preceding the date of the qualifying crime, or copies of all state and federal income tax returns filed by the victim or applicant for the tax year immediately preceding the date of the crime or during the year of the crime, if available, or a Statement of Wages or Income as used to file with federal or state taxing authorities such as a W-2 IRS form actually filed with the taxing authorities, or a statement signed by the employer attesting to the payment of wages or income to the victim which statement shall include the name, telephone number and address of the employer or person who paid or would have paid the wages or income along with the employer's Federal Identification Number.

A statement of disability shall be signed by the medical or mental health provider and shall include information concerning the prognosis for recovery, the extent and expected duration of disability, and certification that the disability resulted directly from the qualifying crime.

(3) If funeral or burial expenses are claimed as a direct result of the qualifying crime, an itemized statement for all funeral or burial expenses incurred through the date of the application.

(4) If rehabilitative services are claimed, the applicant shall produce that evidence of need, and documentation for rehabilitation as specified in Section 649.3(c) of these regulations.

(c) A copy of the crime report or substitute reports as set forth herein evidencing the commission of the qualifying crime and setting forth the circumstances and factual events surrounding it has been received.

In order to expedite the processing of the application, applicants shall be encouraged to obtain and submit, along with the application, a copy of the crime report as prepared by the law enforcement agency to which the qualifying crime was reported. In cases in which the applicant or his or her representative are unable or decline to obtain such crime report, VOC or joint powers victim witness centers shall obtain the crime report.

No application shall be deemed complete until VOC or its contract agencies have received a copy of the crime report.

In cases in which the law enforcement agency deems it advisable to withhold a copy of the crime report from public disclosure in order to assure the security of innocent parties or the integrity of on-going criminal investigations, such agency may substitute a report that provides the facts of the qualifying crime, whether the victim or derivative victim participated in the commission of the qualifying crime, was involved in the events leading to the qualifying crime and whether the victim or derivative victim cooperated with law enforcement. In the event that no crime report was prepared, a declaration must be provided, signed under penalty of perjury by the victim or derivative victim, or in the case of a minor, by the adult having lawful supervision and custody of the minor upon information and belief, stating whether the qualifying crime was reported to a law enforcement agency, and if not, the reasons why, and providing information on all measures taken by the victim or derivative victim, or parties exercising custody and control of the victim or derivative victim to cooperate with law enforcement. In the event that no crime report was prepared the declaration shall include a narrative of the events leading up to and including the actual perpetration of the qualifying crime giving rise to the claim as well as the names of all witnesses.

§ 649.10. Supplemental Claim Process.

(a) All supplemental claims shall be deemed complete within the meaning of Section 13962(a) of the code only if the applicant or authorized representative provides the following information:

(1) The name of the applicant, and if different the name of the victim or derivative victim.

(2) The mailing address and telephone number of the applicant, or any named representative of the applicant if such information has changed since the filing of the application.

(3) The claim or file number assigned by VOC to the application filed on behalf of the victim or derivative victim.

(4) A statement that invoices for services received which are appended to the supplemental claim are for services directly related to injuries sustained as a result of the qualifying crime and for no other reason and that such services were actually received by the victim or derivative victim.

(5) If, since the date of the application, commencement of a civil action is contemplated or has been filed, a statement whether the victim, the victim's survivors, or derivative victim have commenced or intend to commence a civil action to recover monetary damages from the perpetrator or perpetrators of the qualifying crime or from any other party in connection with the qualifying crime, along with the name, telephone number and address of any attorney representing the applicant, victim, or derivative victim in such civil proceedings.

(6) In the event that collateral benefits have been applied for or received since the time of filing the application, a disclosure as to these collateral benefits or assistance.

(b) In addition to the above, a request for supplemental assistance shall contain the following documentation attached to the supplemental claim:

(1) If medical or mental health expenses are claimed to have been incurred as a direct result of the qualifying crime, an itemized statement from the professional provider for all medical or mental health expenses claimed, including the license number of the professional certificate issued by the State of California or other jurisdiction to the medical or mental health practitioner providing the service as well as his or her business address and telephone number. If mental health psychotherapy services were provided, a designation as to whether any counseling or psychotherapy provided was in an individual, family or group setting. Providers of services who are authorized by law to offer such services as part of their on-going business activity, but who are not required to obtain a professional or occupational license must provide either their social security number, or their Federal Employer Identification Number.

(2) If loss of income is claimed to have occurred as a direct result of the qualifying crime and the applicant has not previously made a claim for loss of income, he or she shall produce evidence of income loss as well as a statement of disability as required by Section 649.9(b)(2) of these regulations. Where documentation of income loss has previously been submitted with the application and no

change as to the level of income or earnings has occurred, no further documentation of income loss shall be required to be submitted. Where a statement of disability was previously submitted with the application, but the prognosis for recovery has changed or the term of disability is changed, a new statement of disability shall be required, to be signed by the treating medical or mental health provider. Such statement of disability shall provide that information as is required by Section 649.9(b)(2) of these regulations.

(3) If funeral or burial expenses are claimed as a direct result of the qualifying crime, an itemized statement for all funeral or burial expenses incurred as of the date of the supplemental claim and not previously submitted.

(4) If rehabilitative services are claimed, the applicant shall produce that evidence of need, and documentation for rehabilitation as specified in Section 649.3(c) of these regulations.

(c) Providers may submit the supplemental claims directly to the board in only the following two instances:

(1) When the victim or derivative victim is a minor; or

(2) When the provider certifies that they are unable to obtain the applicant's signature, they performed the services billed and the services are related to the qualifying crime.

§ 649.11. Applications for Emergency Awards.

(a) An applicant may indicate on the application that he or she is applying for an emergency award.

(b) Upon receipt of an application for an emergency award, the Board shall expedite the process of verifying the application to determine if an emergency award is appropriate. Board staff shall make telephone calls and transmit documents electronically or by facsimile to quickly obtain information necessary to evaluate an application for an emergency award. A decision regarding an application for an emergency award shall be promptly communicated to the applicant.

(c) An emergency award may be allowed when it is necessary to avoid or mitigate a substantial hardship to the applicant that is the direct result of the qualifying crime. Substantial hardship shall include the following:

(1) The inability to provide for the necessities of life, including but not limited to shelter, food, medical care, or personal safety, without the emergency award.

(2) The inability to pay for funeral and burial expenses or crime scene cleaning expenses without the emergency award.

(d) The amount of an emergency award shall be based on the applicant's immediate financial need as a direct result of the qualifying crime. Immediate financial need shall be determined by the financial assistance needed to avoid

substantial hardship before the receipt of non-emergency assistance.

(e) An applicant for an emergency award shall provide sufficient information to substantiate both of the following:

(1) An emergency award is necessary to avoid substantial hardship as a direct result of the qualifying crime; and

(2) The applicant has an immediate financial need for an emergency award as a direct result of the qualifying crime.

(f) If sufficient information as required by subdivision (e) is not provided, an application for an emergency award shall be processed as an application for non-emergency assistance. The amount of the emergency award being requested shall be considered when determining the amount or type of information required to verify the application for an emergency award.

§ 649.12. Incomplete Applications.

Incomplete applications for emergency awards and supplemental claims shall be returned to the applicant for completion or appeal in the same manner as an incomplete application is returned to the applicant pursuant to Section 13962(a) of the code.

§ 649.13. Certification.

All applications and supplemental claims shall be certified under penalty of perjury by the victim or derivative victim where the victim or derivative victim is the applicant, or shall be attested to under information and belief if completed by an applicant other than the victim or derivative victim, by a provider or by an authorized representative.

§ 649.14. Third Party Verification.

In all cases where VOC requests verification from hospitals, physicians, law enforcement officials or other interested parties and these third parties fail to return the requested information within 10 (ten) days as specified in Section 13962(b) of the code, the board may through its staff, review the application and all attachments as filed by the applicant and may in the exercise of its sound judgment deem the application to be verified based solely on a review of those documents.

§ 649.15. Application Without Verified Pecuniary Loss.

When an applicant files an application for assistance supplying all of the required information as set forth in paragraph (a) of Section 649.9 but either fails or declines to provide any of the information needed to verify actual pecuniary loss as set forth in paragraph (b) of Section

649.9, the VOC shall treat the application as an application for a zero award and so notify the applicant and his or her representative. Nothing in this section shall be construed to prevent VOC from paying those claims for which documentation required by subparagraph (b) of Section 649.9 has been provided while treating the balance of any claims for which information required by that regulation has not been submitted as an application for a zero award.

§ 649.16. Lien.

In all cases the victim or derivative victim shall execute a lien in favor of the fund, which lien shall be submitted with the application and may be utilized by the VOC to seek reimbursement in the event that subsequent civil proceedings are commenced and successfully prosecuted.

§ 649.17. Collateral Benefits.

In the event that other collateral benefits) are disclosed as required during verification, the applicant shall obtain and provide a written explanation of such benefits from the insurer, or benefit program setting forth a determination of eligibility as regards the victim, the victim's survivors, or derivative victim as well as the dollar amount of assistance or reparations to which the victim, the victim's survivors, or derivative victim is entitled. In the event that the applicant is unable to obtain an explanation of benefits, the VOC or joint powers victim witness center shall take steps to obtain such explanation of benefits and the application or portion of the application governed by such explanation of benefits shall be treated as a "zero award" until such time as the explanation of benefits is received.

§ 649.18. Objection to Direct Payment.

The Board shall inform the victim or derivative victim of his or her right to object to direct payments by VOC to providers of services in accordance with Section 13965(a) of the code. In the event that the victim or derivative victim asserts such right the VOC shall reimburse pecuniary loss to the victim or derivative victim only in amounts equal to sums actually paid out by the victim or derivative victim to the service provider and only upon submission by the victim, the victim's survivors, or derivative victim of evidence of such payments. Following such an objection, direct payment shall be made to the provider only upon a demonstration of good cause as determined by the board.

§ 649.20. Consideration of Applications.

(a) Verification of applications and supplemental claims shall take place within the average 90 days prescribed by Section 13962(b) of the code.

(b) Following the verification process, VOC staff shall make a recommendation to the Board regarding the application or supplemental claim. Staff may recommend that the Board allow the application or supplemental claim, disallow the application or supplemental claim, or allow the application or supplemental claim in part and disallow the application or supplemental claim in part.

(c) If the VOC staff recommends that the Board allow the application or supplemental claim, the matter shall be placed on the Board's consent hearing agenda. Notice of the hearing and staff recommendation for approval shall be given.

(d) In the event that VOC staff recommends disallowance of an application or supplemental claim, the staff of VOC shall prepare a "Notice of Staff Recommended Disallowance," or in the case of approval of payment in some amount less than that for which the application or supplemental claim was made, a "Notice of Staff Recommended Partial Disallowance." Such notice shall include a statement as to why the matter is recommended for disallowance and shall be mailed to the affected applicant and his or her representative at their last known address of record as set forth on the application or most recent supplemental claim on file with the VOC, or more current notice of address change from the applicant or his or her representative. Such notice shall be mailed within the average 90 days prescribed by Section 13962(b) of the code. Every "Notice of Staff Recommended Disallowance" or "Notice of Staff Recommended Partial Disallowance" shall contain the following statement in bold upper case type:

"THIS STAFF RECOMMENDED DISALLOWANCE DOES NOT CONSTITUTE A FINAL ADMINISTRATIVE DETERMINATION BY THE BOARD OF CONTROL TO DENY YOUR APPLICATION OR CLAIM. IT MERELY CONSTITUTES NOTICE THAT THE STAFF OF THE BOARD FOLLOWING ITS VERIFICATION PROCESS HAS RECOMMENDED DISALLOWANCE OR PARTIAL DISALLOWANCE. THIS RECOMMENDATION IS SUBJECT TO HEARING BY THE BOARD OF CONTROL. TO PARTICIPATE IN SUCH HEARING AND TO ENSURE A FULL DISCUSSION OF ALL RELEVANT ISSUES YOU SHOULD FOLLOW THE PROCEDURES SET FORTH IN THIS NOTICE."

(e) If the application or supplemental claim is recommended by staff for disallowance or partial disallowance, the applicant shall have 45 days from the

date of such notice to request in writing, that the matter be set for hearing to contest the staff recommendation. Nothing in this section shall be construed to prevent an applicant or his or her representative from communicating with VOC staff during the period between notice of disallowance and the date of hearing in order to supply additional information. Nothing in this section shall be construed to prevent VOC staff from amending their initial recommendation where additional documentation or information provides the necessary evidence to recommend approval of an application or supplemental claim. All written requests for hearing shall be mailed or delivered to the headquarters office of the Victims of Crime Program at Sacramento, California, the address for which shall be provided on this notice. Failure to request a hearing within the stated 45 days shall result in the matter being placed on the board's consent hearing agenda with a staff recommendation for disallowance or partial disallowance. Such items may be removed from the consent agenda and made subject to a hearing only upon request by a member of the board. Board staff shall notify the applicant or his or her representative of such hearing.

(f) Upon receipt of a written request for a hearing as specified in Paragraph (e) of this section and after considering the convenience to the applicant as to location for hearing, the staff of the board shall set a hearing to consider the disputed application or supplemental claim, and shall notify the applicant or his or her representative of the hearing.

§ 649.21. Requests for Reconsideration.

Requests for reconsideration filed by applicants or their representatives in accordance with Section 13969.1 of the code shall be accepted by the board only after the board has acted on the application or supplemental claim at a hearing following a "Notice of Staff Recommended Disallowance" or a "Notice of Staff Recommended Partial Disallowance." Requests for reconsideration shall not be granted unless the applicant produces new and additional evidence not reasonably available to the applicant at the time of the hearing. Nothing in this section shall be construed to prevent the board from granting reconsideration on its own motion.

§ 649.22. Zero Awards.

In cases where VOC determines that the application filed by the applicant merely seeks an initial determination of eligibility without reference to specific pecuniary loss, or where the applicant fails to produce evidence of pecuniary loss as required in Section 649.9(b) of these regulations, the board shall process the application as a "zero award". In such cases the VOC notice of eligibility to the applicant and his or her representative within a period of

90 days from the acceptance of a complete application shall constitute compliance with the average 90 day processing requirement as set forth in Section 13962(b) of the code. The issuance of a zero award shall not obligate the board to pay claims until it has received fully verified evidence of pecuniary loss by the victim or derivative victim, and has satisfied itself that no other source of benefits or assistance is available to the victim or derivative victim to compensate for this loss.

§649.23 Service Limitations for Mental Health Counseling

(a) Reimbursement for outpatient mental health counseling expenses shall be limited as follows:

(1) A victim who is a minor at the time of the qualifying crime may receive up to 40 sessions, except that a victim described in Government Code section 13957(a)(2)(B)(ii) may receive up to 30 sessions.

(2) A victim who is an adult at the time of the qualifying crime may receive up to 30 sessions.

(3) A derivative victim may be eligible for only one of the following, whichever provides the greatest assistance:

(A) A derivative victim described in Government Code section 13957(a)(2)(A)(ii) may receive up to 30 sessions.

(B) A derivative victim eligible to receive reimbursement for mental health counseling related expenses may receive up to 15 sessions.

(C) A derivative victim described in Government Code section 13957(a)(2)(A)(iii) may receive up to a total of 30 sessions for not more than two derivative victims. A derivative victim may receive more than 15 sessions under this subsection only if the additional sessions are necessary for the treatment of the victim.

(b) The outpatient mental health counseling related service limitations described in subsection (a) shall be deemed to be appropriate to the level of treatment medically necessary for a victim or derivative victim unless additional reimbursement is authorized by the Board.

(c) The following shall apply when determining the number of authorized sessions:

(1) An individual mental health counseling session lasting less than 45 minutes is one-half session.

(2) An individual mental health counseling session lasting from 45 minutes to less than one hour and 14 minutes is one session.

(3) An individual mental health counseling session lasting from one hour and 15 minutes to one hour and 44 minutes is one and one-half session.

(4) An individual mental health counseling session lasting from one hour and 45 minutes to two hours is two sessions.

(5) One group mental health counseling session is counted as one-half of an individual mental health

counseling session of the same length as the group mental health counseling session.

(6) No more than three of the sessions authorized by subsection (a) shall be permitted for meetings or discussions between the treating therapist and collateral contacts of the person being treated, including but not limited to: school counselor or teacher; religious leader; physician or other medical provider; or social worker.

(A) Additional sessions for meetings or discussions between the therapist and collateral contacts may be approved under section 649.24.

(d) A victim or derivative victim who is eligible for reimbursement for outpatient mental health counseling expenses may receive five initial sessions.

(e) No expenses for sessions beyond the initial sessions described in subsection (d) shall be reimbursed without submission of a treatment plan and approval of additional treatment by the Board.

(1) A treatment plan shall include the following information:

(A) A description of the presenting complaint, symptoms and impairment;

(B) A description of the crime for which the mental health provider is providing mental health counseling services;

(C) An evaluation on all five axes using criteria in the *Diagnostic and Statistical Manual of Mental Disorders*, 4th Edition (DSM IV);

(D) An evaluation of functioning using criteria in the *Diagnostic and Statistical Manual of Mental Disorders*, 4th Edition (DSM IV), including an evaluation of overall functioning, social and occupational functioning, and relational functioning, including all of the following:

(i) Global Assessment of Functioning (GAF);

(ii) Social and Occupational Functioning Assessment Scale (SOFAS); and

(iii) Global Assessment of Relational Functioning (GARF).

(E) A description of the focus of treatment, including the symptoms or cluster of symptoms.

(F) A description of the plan of treatment, including a specific description of the method by which the symptoms or impairments will be specifically treated.

(G) A description of the means by which the progress of treatment will be measured.

(H) An estimate of the treatment that is necessary as a direct result of the qualifying crime.

(f) No expenses for sessions beyond the 15th session shall be reimbursed without submission of a treatment progress report and approval of additional treatment by the Board.

(1) A treatment progress report shall include the following information:

(A) An evaluation of the progress made toward meeting the goals of the treatment plan; and

(B) An evaluation of the factors that are hindering progress toward meeting the goals of the treatment plan.

(g) All information necessary to evaluate reimbursement of outpatient mental health expenses shall be provided in the documents required to be submitted by this section or section 649.24. The Board may require the submission of any other information required to determine whether the treatment will best aid the person and is necessary as a direct result of the qualifying crime.

(h) This section does not authorize the payment of expenses in excess of the limits in Government Code section 13957(a)(2).

§ 649.24 Service Limitations for Additional Mental Health Counseling

(a) No expenses for sessions beyond those authorized by section 649.23 shall be reimbursed without submission of an additional treatment plan and approval of additional treatment by the Board.

(1) The additional treatment plan shall include the following information:

(A) An update on all information required by section 649.23(e)(1) or included in the treatment plan submitted under section 649.23(e).

(B) An update on all information required by section 649.23(f)(1) or included in the treatment progress note submitted under section 649.23(f).

(C) A detailed description of the factors supporting the request for reimbursement for additional treatment.

(2) The Board may require the submission of any other information required to determine whether the treatment will best aid the person and is necessary as a direct result of the qualifying crime. (b) Reimbursement for additional outpatient mental health counseling expenses shall not be approved unless the requirements of section 649.25, 649.26, or 649.27 are met, or in the Board's sole discretion, additional treatment is determined to best aid the person and is necessary as a direct result of the crime.

(c) Objective assessment measures with demonstrated reliability and validity in peer review literature shall be given significant weight when evaluating a request for additional treatment.

(d) Independent corroborative information may be given significant weight when evaluating a request for additional treatment.

(e) Notwithstanding subsections 649.25(a)(4), 649.26(a)(4), 649.27(a)(1)(D) and 649.27(a)(2)(C), if inadequate progress has been shown in treatment, additional treatment may be authorized, in the Board's sole discretion, for a different treatment modality, method, or provider.

(f) Expenses in excess of the limits in Government Code section 13957(a)(2) shall not be reimbursed without complying with this section and without determining that the factors listed in subsections

649.25(a), 649.26(a) or 649.27(a) indicate that dire or exceptional circumstances require more extensive treatment.

§ 649.25 Service Limitations for Additional Mental Health Counseling for Minor Victims

(a) Reimbursement for additional outpatient mental health counseling expenses for a minor victim may be provided if all of the following requirements are met:

(1) At least one of the following factors is present:

(A) The qualifying crime resulted in permanent and substantial impairment to the victim's activities of daily living.

(B) The qualifying crime resulted in permanent and substantial disfigurement.

(C) The qualifying crime resulted in injuries that severely impaired the victim's ability to successfully engage in daycare, pre-school, or school commensurate with his or her experience and his or her activities immediately before the qualifying crime.

(D) The qualifying crime is a sexual assault offense involving conduct described in Penal Code section 11165.1(b)(1), (2) or (3).

(E) The qualifying crime resulted in serious bodily injury, as defined in Penal Code section 243(f)(4), includes a series of acts of significant frequency or duration, or is a sexual assault offense involving conduct described in Penal Code section 11165.1(a) or (b) that is not described in subdivision subsection (a)(1)(D) of this regulation and one of the following factors is present:

(i) The perpetrator of the qualifying crime was a person in a position of trust or authority with the victim, including, but not limited to a parent, teacher, or religious leader.

(ii) The victim was removed from the home as a result of the qualifying crime and is still out of the home at the time of treatment.

(iii) The victim's parent minimizes the significance of the qualifying crime, blames the victim for the qualifying crime, fails to acknowledge that the suspect committed the qualifying crime, or does not believe the qualifying crime occurred.

(iv) Another minor in the victim's immediate family was also a victim of the same qualifying crime of sexual abuse committed by the same perpetrator.

(F) The victim reaches a developmental stage or a stage of cognitive development that results in impairment as a direct result of the qualifying crime.

(G) The alleged suspect persists in making uninvited and unwelcome contact with the victim that is not authorized by a court.

(H) The victim is scheduled to testify as a witness or is required to be involved with or participate in any criminal or dependency proceeding related to the qualifying crime. To be reimbursed, the mental health counseling must be provided within three months of the victim being

scheduled to testify or learning that the victim is required to be involved with or participate in the proceeding.

(1) The perpetrator is released from custody. To be reimbursed, the mental health counseling must be provided within three months of learning that the perpetrator is going to be, or was, released from custody.

(2) The treatment is focused on behaviors or beliefs that are directly attributable to the qualifying crime and could reasonably be remediated by the proposed treatment.

(3) The victim suffers substantial impairment of functioning that is directly attributable to the qualifying crime. Impairment shall be determined by the criteria required by section 649.23(e)(1)(D) and substantiation submitted to support the request for additional treatment.

(4) Treatment has progressed, as evidenced by the percentage completed for treatment aimed at the remediation of the impairment caused by behaviors or beliefs that are directly attributable to the qualifying crime.

(b) If additional treatment was authorized for a minor victim under subsection (a), any subsequent request may be authorized only if both of the following requirements are met:

(1) The requirements of subsection (a) are met.

(2) It is determined that the proposed treatment is reasonably likely to successfully overcome the factors that hindered the progress of treatment so far.

§ 649.26 Service Limitations for Additional Mental Health Counseling for Adult Victims

(a) Reimbursement for additional outpatient mental health counseling expenses for an adult victim may be provided if all of the following requirements are met:

(1) At least one of the following factors is present:

(A) The qualifying crime resulted in permanent and substantial impairment to the victim's activities of daily living.

(B) The qualifying crime resulted in permanent and substantial disfigurement.

(C) The qualifying crime resulted in injuries that permanently and severely impaired the victim's ability to successfully engage in an occupation commensurate with his or her experience, education and training and his or her occupation or activities immediately before the qualifying crime.

(D) The qualifying crime is a sexual assault offense involving conduct described in Penal Code section 11165.1(b)(1), (2) or (3).

(E) The qualifying crime includes a series of acts of significant frequency or duration.

(F) The victim is scheduled to testify as a witness in any criminal proceeding related to the qualifying crime. To be reimbursed, the mental health counseling must be provided within three months of being scheduled to testify.

(G) The perpetrator is released from custody. To be reimbursed, the mental health counseling must be provided within three months of learning that the perpetrator is going to be, or was, released from custody.

(2) The treatment is focused on behaviors or beliefs that are directly attributable to the qualifying crime and could reasonably be remediated by the proposed treatment.

(3) The victim suffers substantial impairment of functioning that is sufficient to warrant additional treatment and is directly attributable to the qualifying crime. Impairment shall be determined by the criteria required by section 649.23(e)(1)(D) and substantiation submitted to support the request for additional treatment.

(4) Treatment has progressed, as evidenced by the percentage completed for treatment aimed at the remediation of the impairment caused by behaviors or beliefs that are directly attributable to the qualifying crime.

(b) If additional treatment was authorized for an adult victim under subsection (a), any subsequent request may be authorized only if both of the following requirements are met:

(1) The requirements of subsection (a) are met.

(2) It is determined that the proposed treatment is reasonably likely to successfully overcome the factors that hindered the progress of treatment so far.

§ 649.27 Service Limitations for Additional Mental Health Counseling for Derivative Victims

(a) A request for reimbursement for additional outpatient mental health counseling expenses for a derivative victim shall be evaluated as follows:

(1) Additional reimbursement may be provided if all of the following requirements are met:

(A) One of the following factors is present:

(i) The qualifying crime resulted in the death of the victim.

(ii) The derivative victim is scheduled to testify as a witness in any criminal proceeding related to the qualifying crime. To be reimbursed, the mental health counseling must be provided within three months of being scheduled to testify.

(B) The treatment is focused on behaviors or beliefs that are directly attributable to the qualifying crime and could reasonably be remediated by the proposed treatment.

(C) The derivative victim suffers substantial impairment of functioning that is directly attributable to the qualifying crime. Impairment shall be determined by the criteria required by section 649.23(e)(1)(D) and substantiation submitted to support the request for additional treatment.

(D) Treatment has progressed, as evidenced by the percentage completed for treatment aimed at the remediation of the impairment caused by behaviors or beliefs that are directly attributable to the qualifying crime.

(2) Additional reimbursement may be provided if both of the following requirements are met:

(A) At least one of the factors listed in subsections 649.25(a)(1) or 649.26(a)(1) is present.

(B) The treatment is necessary for the recovery of the victim.

(C) Treatment has progressed, as evidenced by the percentage completed for treatment aimed at the remediation of the victim's impairment caused by behaviors or beliefs that are directly attributable to the qualifying crime.

(b) If additional treatment was authorized for a derivative victim under subsection (a)(1), any subsequent request may be authorized only if both of the following requirements are met:

(1) The requirements of subsection (a)(1) are met.

(2) It is determined that the proposed treatment is reasonably likely to successfully overcome the factors that hindered the progress of treatment so far.

(c) If additional treatment was authorized for a derivative victim under subsection (a)(2), any subsequent request may be authorized only if all of the following requirements are met:

(1) The requirements of subsection (a)(2) are met.

(2) The treatment is focused on behaviors or beliefs that are directly attributable to the qualifying crime and could reasonably be remediated by the proposed treatment.

(3) The victim suffers substantial impairment of functioning that is directly attributable to the qualifying crime.

(4) It is determined that the proposed treatment is reasonably likely to successfully overcome the factors that hindered the progress of treatment so far.

§ 649.28 Audit of Mental Health Counseling Providers

(a) A provider of outpatient mental health counseling related services who receives payment from, or whose services were reimbursed by, the Victim Compensation Program shall be subject to a clinical or fiscal audit, or both, to ensure that treatment and reimbursement were authorized by law.

(b) A provider shall make all necessary clinical and fiscal records available to Board staff for review upon request for up to three years after the date that reimbursement was paid.

§ 649.71. Reimbursement Calculation.

The amount of reimbursement paid by the Board shall not exceed the maximum rate set by the Board, if any, less the amount of reimbursement available from other sources.

§ 649.72. Eligibility of Felons.

(a) The Board shall accept an application or a petition for relief to file a late application from a person who has been

convicted of a felony in the same manner as for other applicants. Neither that the applicant is presently incarcerated nor that the applicant has been convicted of a felony and has not been discharged from probation or released from [sic] a correctional institution and discharged from parole shall be reason for the Board to refuse to accept an application.

(b)(1) The Board shall not grant assistance to a person who has been convicted of a felony committed on or after January 1, 1989, when the assistance is to compensate for pecuniary loss sustained after the person is convicted of the felony and before the person is discharged from probation or has been released from a correctional facility and is discharged from parole, if any.

(2) The Board shall grant assistance to a person otherwise eligible for assistance who has been convicted of a felony to compensate for pecuniary loss sustained as a result of victimization occurring after conviction and before discharge from probation or release from [sic] a correctional facility and discharge from parole, when the loss was incurred after discharge from probation or parole.

(3) The pecuniary loss for which reimbursement is barred because it was sustained after the person had been convicted of a felony and before the person was discharged from probation or released from a correctional institution and discharged from parole will not become reimbursable upon the person's discharge from probation or release from a correctional institution and discharge from parole.

(c) As used in this section, "parole" includes "supervised release."

§ 650.1. Effective Date of Substantive Changes.

(a) Unless otherwise required by law, a substantive change to eligibility shall be effective for applications resulting from a qualifying crime that occurred on or after the effective date of the substantive change.

(b) An effective date or date of limitation included in the express provisions of a regulation section shall apply if there is any conflict or inconsistency with this section.

§ 651.1. Residency Requirements.

(a) A victim must be a resident of California if the qualifying crime occurred outside California.

(b) A victim need not be a resident of California if the qualifying crime occurred in California if the board determines that federal funds are available for compensation of victims of crime.

(c) A derivative victim of a qualifying crime prior to January 1, 1999, must be a resident of California.

(d) A derivative victim of a qualifying crime on or after January 1, 1999, must be a resident of California or another state.

§ 651.2. Victim or Derivative Victim Election.

A person shall not be eligible as both a victim and a derivative victim for the same qualifying crime.

§ 651.3. Derivative Victims Who Previously Had Relationship with Victim Substantially Similar to Family Member.

(a) A person may be found to have a relationship with a victim that is substantially similar to that of a parent if the person provided a significant portion of the necessities of life for the victim, including but not limited to the following:

- (1) financial support;
- (2) food;
- (3) clothing;
- (4) shelter;
- (5) medical expenses;
- (6) educational expenses;
- (7) emotional support.

(b) A person may be found to have a relationship with a victim that is substantially similar to that of a sibling if the person:

- (1) lived in the same household as the victim; and
- (2) was under the care of the same parent or parents, primary caretaker, or legal guardian.

(c) Factors that may be considered when determining whether a person has a relationship with a victim that is substantially similar to that of a spouse include, but are not limited to:

- (1) residence in the same household for at least 6 months;
- (2) joint ownership of a residence;
- (3) joint ownership of a motor vehicle;
- (4) use of a joint bank account;
- (5) use of a joint credit card account;
- (6) maintenance of a sexually or emotionally intimate relationship;
- (7) a significant portion of the items listed in subsection (a) are shared with, or provided to the victim.

(d) In order to be found to have a relationship with a victim that is substantially similar to that of a spouse under subsection (c), neither party to the relationship shall have a relationship that is substantially similar to that of a spouse with any other person.

(e) A person may be found to have a relationship with a victim that is substantially similar to that of a child if the victim provided the person a significant portion of the necessities of life as listed in subsection (a).

(f) For the purpose of qualifying as a derivative victim under Government Code section 13960(a)(2)(C), the two-year period during which the person lived in the victim's household in a relationship substantially similar to that of a parent, sibling, spouse or child may be either cumulative or consecutive.

§ 651.4. Eligibility of Law Enforcement Officers.

A law enforcement officer who is a victim of a qualifying crime while acting within the course and scope of the officer's employment shall receive assistance for which the officer is otherwise eligible.

§ 651.5. Eligibility of Felons.

(a) The fact that a victim is disqualified from receiving assistance under section 649.72(b) shall not affect the eligibility of a derivative victim of the same qualifying crime who is otherwise eligible for assistance.

(b) The fact that a derivative victim is disqualified from receiving assistance under section 649.72(b) shall not affect the eligibility of a victim of the same qualifying crime who is otherwise eligible for assistance.

§ 652.1. Emotional Injury.

A victim or derivative victim may be compensated for emotional injury if the victim also sustained one of the following:

- (a) physical injury; or
- (b) threat of physical injury.

§ 652.2. Examples of Threat of Physical Injury.

A threat of physical injury includes, but is not limited to the following situations:

- (a) the victim was directly threatened with a weapon;
- (b) the victim was within sight of a person brandishing a weapon and reasonably felt threatened for his or her own safety;
- (c) the victim was directly threatened verbally with serious bodily injury and there was a reasonable probability that:
 - (1) the threat would be carried out; and
 - (2) physical injury would result if the threat were carried out.

§ 653.1. Date of Qualifying Crime.

The date of a qualifying crime that is comprised of a series of acts under section 653.3 is the date on which the last act occurred prior to the date of the application.

§ 653.2. Qualifying Crime Occurring Outside California.

(a) A California resident who is a victim of a qualifying crime outside California shall first apply for assistance in the state where the qualifying crime occurred.

(1) Subsection (a) shall not apply if the qualifying crime occurred in a state that does not provide assistance to a non-resident victim.

(b) A California resident who is a victim of a qualifying crime outside California who is eligible for assistance shall not receive assistance until one of the following occurs:

(1) the program of the state in which the qualifying crime occurred determines that the person is not eligible for the program; or

(2) the program benefits of the state in which the qualifying crime occurred are exhausted.

(c) This section shall not apply if the qualifying crime occurred both inside and outside California.

§ 653.3. Acts Constituting One Qualifying Crime.

(a) An act or series of acts by a perpetrator or perpetrators that is a continuing series of events, regardless of the time period over which the acts occur, may be considered one crime for the purpose of filing an application or eligibility.

(b) The following shall constitute one crime for the purpose of filing an application or for eligibility:

(1) the same or similar crime is repeatedly committed against the same victim over a period of time by a single perpetrator;

(2) the same or similar crime is repeatedly committed against the same victim over a period of time by more than one perpetrator acting in concert or with the knowledge of the conduct of the other perpetrator or perpetrators;

(3) a series of crimes is committed against the same victim by one or more perpetrators over a period of time with a continuity of purpose.

(c) An act or series of acts that is one crime under this section that continues after an application is submitted constitutes one crime for the purpose of filing an application or for eligibility.

(d) A qualifying crime may have more than one victim or derivative victim.

(e) When there is more than one victim of the same acts described in subsection (b)(1), (2) or (3), a victim shall not be eligible as both a victim and a derivative victim for the same acts.

§ 653.4. Proof of the Qualifying Crime.

An applicant has the burden of proving each element of a qualifying crime.

§ 653.5. Evidence of the Qualifying Crime.

(a) A conviction shall be sufficient proof that a crime occurred.

(b) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when determining whether or not a qualifying crime occurred.

(c) Factors that may be considered as evidence of a qualifying crime include, but are not limited to:

(1) an admission of guilt to law enforcement; and

(2) the filing of a criminal charge for the qualifying crime.

(d) Medical or mental health records alone may not be sufficient evidence that a qualifying crime occurred.

§ 653.6. Denial for Failure to File or Dismissal of a Criminal Complaint.

(a) An application shall not be denied solely because a criminal complaint was not filed.

(b) An application may be denied if a criminal complaint was not filed due to the victim's or derivative victim's failure to cooperate with a law enforcement agency.

(c) An application shall not be denied solely because a criminal complaint was dismissed.

(d) An application may be denied if the criminal complaint was dismissed as a result of the victim's or derivative victim's failure to cooperate with a law enforcement agency.

§ 654.1. Vehicle-Related Qualifying Crime.

(a) No act involving the operation of a motor vehicle, aircraft, or water vehicle constitutes a qualifying crime except as provided in subsection (b).

(b) Notwithstanding subsection (a), the following shall constitute qualifying crimes:

(1) injury or death intentionally inflicted through the use of:

(A) a motor vehicle;

(B) an aircraft; or

(C) a water vehicle.

- (2) injury or death caused by a driver in violation of Vehicle Code section 20001 [Hit and run];
- (3) injury or death by a person who is under the influence of an alcoholic beverage or drug;
- (4) injury or death by a driver of a motor vehicle while fleeing the scene of a crime in which the driver knowingly or willingly participated;
- (5) murder [Penal Code section 187] when a motor vehicle, aircraft or water vehicle is the instrumentality of the murder;
- (6) gross vehicular manslaughter while intoxicated [Penal Code section 191.5];
- (7) injury or death caused by a driver in violation of Penal Code section 192(c) [Vehicular manslaughter];
- (8) causing bodily injury while driving under the influence of alcohol or drugs [Vehicle Code section 23153];
- (9) injury or death caused by a driver in violation of Penal Code section 192.5 [Vehicular manslaughter in a vessel].

§ 654.2. Evidence of a Child Sexual or Physical Abuse Qualifying Crime.

- (a) Factors that shall be considered evidence of a child sexual or physical abuse qualifying crime include, but are not limited to:
 - (1) a sustained juvenile court dependency petition containing allegations of sexual or physical abuse, unless the court finds that the allegations of sexual or physical abuse did not occur;
 - (2) medical or physical evidence consistent with child sexual or physical abuse;
 - (3) a written or oral report from a law enforcement agency or a child protective services agency concluding that child sexual or physical abuse occurred;
 - (4) a credible witness corroborated the child sexual or physical abuse;
 - (5) a juvenile court order removed the child from the home because of sexual or physical abuse;
 - (6) criminal charges of child sexual or physical abuse were filed.
- (b) Factors that may be considered evidence of a child sexual or physical abuse qualifying crime include, but are not limited to:
 - (1) a mental health evaluation concluded that child sexual or physical abuse occurred;
 - (2) the child victim's statement to a law enforcement or child protective services staff;
 - (3) evidence of behavior consistent with child sexual or physical abuse;

- (4) a final superior court order that finds that child sexual or physical abuse occurred.
- (c) A report under subsection (a)(3) shall contain all of the following information:
 - (1) name, telephone number and title of the person making the report;
 - (2) specific facts that form the basis of the conclusion that a crime occurred;
 - (3) citation to the relevant criminal statute for the crime that occurred.

§ 654.3. Presumption of Physical Injury in a Child Abduction Qualifying Crime.

The presumption of physical injury under Government Code sections 13960(b)(1) and (2) for violations of Penal Code sections 278 or 278.5 requires that the deprivation of custody continue for at least 30 consecutive days.

§ 654.4. Evidence of a Domestic Violence Qualifying Crime.

- (a) Factors that may be considered as evidence of a domestic violence qualifying crime include, but are not limited to:
 - (1) the perpetrator was prosecuted for the qualifying crime;
 - (2) the perpetrator was enrolled in a batterers' program or its predecessor domestic violence diversion program as a result of the qualifying crime;
 - (3) a report from law enforcement concluded that a domestic violence crime was committed against the victim;
 - (4) a report from a battered women's program corroborates the allegation of domestic violence;
 - (5) medical records document injuries consistent with the allegation of domestic violence;
 - (6) a law enforcement officer obtained an emergency protective order under Family Code section 6250;
 - (7) a report from a law enforcement officer or prosecuting attorney concluded that a crime of domestic violence occurred;
 - (8) a violation of probation due to a domestic violence qualifying crime against the victim.
- (b) For the purpose of this section, "domestic violence" shall have the same meaning as in Penal Code section 13700(b).

§ 654.5. Presumption of Physical Injury in a Domestic Violence Qualifying Crime.

(a) A minor is presumed to have sustained physical injury as a result of a domestic violence qualifying crime if the child witnessed a domestic violence qualifying crime.

(b) A minor witnessed a domestic violence qualifying crime if the minor saw or heard an act constituting a domestic violence qualifying crime.

(c) Factors that may be considered as evidence that a minor witnessed an act constituting a domestic violence qualifying crime include, but are not limited to:

- (1) the minor placed a 911 call;
- (2) a report from a counselor at a domestic violence agency concluded that the minor witnessed an act constituting a domestic violence qualifying crime;
- (3) a report from an eyewitness corroborated that the minor witnessed an act constituting a domestic violence qualifying crime;
- (4) a restraining order required the perpetrator to stay away from the minor and a declaration supporting the restraining order stated that the minor was the victim of, or was threatened with, physical injury;
- (5) the minor's reliable statements;
- (6) other credible evidence.

§ 654.6. Evidence of the Qualifying Crime of Stalking.

(a) Stalking (Penal Code section 646.9) may be a qualifying crime if the credible threat required by the crime was directed at the victim.

(b) Evidence of a qualifying crime of stalking (Penal Code section 646.9) includes, but is not limited to law enforcement's identification of the victim in the application as the victim in the crime report.

§ 655.1. Participation in the Qualifying Crime.

(a) A victim or derivative victim who knowingly and willingly participated in the commission of the qualifying crime shall not be eligible for assistance.

(1) This subsection shall not apply if the qualifying crime is a violation of Penal Code section 261.5 [Unlawful sexual intercourse with a minor] occurring on or after January 1, 1999.

(b) A derivative victim is not eligible for assistance if the victim of the same qualifying crime knowingly and willingly participated in the commission of the qualifying crime.

(c) A victim or derivative victim knowingly and willingly participated in the commission of the qualifying crime if the victim or derivative victim was any of the following:

- (1) a perpetrator;
- (2) a co-conspirator; or
- (3) an accomplice.

(d) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when determining whether the victim or derivative victim participated in the commission of the qualifying crime.

§ 656.1. Involvement in the Events Leading to the Qualifying Crime.

(a) An application from a victim may be denied, in whole or in part, because of the involvement of the victim in the events leading to the qualifying crime.

(b) An application from a derivative victim may be denied, in whole or in part, because of the involvement of the victim or derivative victim in the events leading to the qualifying crime.

(c) Factors that may be considered when determining whether the victim or derivative victim was involved in the events leading to the qualifying crime include, but are not limited to:

- (1) the conduct of the victim or derivative victim caused, resulted in, or reasonably could have led to the qualifying crime;
- (2) the conduct of the victim or derivative victim was negligent and placed himself or herself, or another person in a position to be injured or victimized;
- (3) the victim or derivative victim intentionally created, entered, or stayed in a situation or environment in which it was reasonably foreseeable that he or she would be victimized;
- (4) the level of responsibility of the victim or derivative victim for the qualifying crime;
- (5) the qualifying crime was a reasonably foreseeable consequence of the conduct of the victim or derivative victim;
- (6) the reasonable ability of the victim or derivative victim to avoid the involvement in the events leading to the qualifying crime;
- (7) the extent of harm to the victim or derivative victim resulting from the crime;
- (8) future harm to the victim or derivative victim that may occur if assistance is not awarded.

(d) A victim or derivative victim need not participate in the qualifying crime or engage in conduct that is illegal in order to be found to be involved in the events leading to the qualifying crime.

(e) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after

investigation of the qualifying crime when determining whether the victim or derivative victim was involved in the events leading to the qualifying crime.

(f) Factors that shall be considered when determining whether a minor victim or derivative victim was involved in the events leading to a qualifying crime under subsection (a) or (b) include, but are not limited to:

- (1) age;
 - (2) physical condition;
 - (3) psychological or emotional condition;
 - (4) compelling health or personal safety factors;
 - (5) reasonable fear of retaliation or harm to self or family.
- (g) The eligibility of a minor derivative victim of a domestic violence qualifying crime shall not be affected by the victim's involvement in the events leading to the domestic violence qualifying crime.

§ 656.2. Involvement in the Qualifying Crime Due to Illegal Drug-Related Activity.

(a) Involvement in the events leading to the qualifying crime by the victim or derivative victim may be found if the victim or derivative victim was either of the following:

- (1) involved in an illegal drug transaction at the time the qualifying crime occurred; or
- (2) victimized as a result of involvement in a prior illegal drug transaction.

(b) An illegal drug transaction includes, but is not limited to the following:

- (1) the illegal purchase of a drug;
- (2) the illegal sale of a drug;
- (3) the illegal possession of a drug for sale;
- (4) the illegal delivery or transportation of a drug;
- (5) the illegal manufacture of a drug.

(c) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when determining whether the victim or derivative victim was involved in the events leading to the qualifying crime under subsection (a).

§ 656.3. Involvement in the Qualifying Crime Due to Gang Involvement.

(a) Involvement in the events leading to the qualifying crime by the victim or derivative victim may be found if the victim or derivative victim was involved in and was injured from a qualifying crime that was a result of gang

activity or prior gang activity in which the victim or derivative victim participated.

(b) Gang activity may include, but is not limited to the following:

- (1) gang initiation;
- (2) gang retaliation;
- (3) gang fighting;
- (4) intentionally provoking gang-related activity.

(c) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when determining whether the victim or derivative victim was involved in the events leading to the qualifying crime under subsection (a).

(d) Gang membership alone shall not be sufficient for a finding of involvement in the events leading to the qualifying crime under subsection (a).

§ 656.4. Involvement in the Qualifying Crime Due to Mutual Combat.

(a) Factors that may be considered when determining whether the victim or derivative victim was involved in the events leading to the qualifying crime as a result of mutual combat include, but are not limited to:

- (1) there was an implicit or explicit agreement to fight;
- (2) the victim or derivative victim made a deliberate threat;
- (3) the victim or derivative victim engaged in conduct indicating the intention of carrying out a deliberate threat;
- (4) the deliberate conduct of the victim or derivative victim reasonably provoked the other party into starting a physical altercation that lead to the qualifying crime;
- (5) the victim or derivative victim initiated a physical altercation that lead to the qualifying crime.

§ 656.5. Involvement in the Qualifying Crime of Prostitution.

(a) Involvement in the events leading to the qualifying crime of prostitution by the victim or derivative victim may be found if the victim or derivative victim was:

- (1) engaged in activity related to prostitution; and
- (2) the crime occurred as a direct result of the activity related to prostitution.

(b) Activity related to prostitution includes, but is not limited to the following:

- (1) soliciting or participating in the solicitation of an act of prostitution;

- (2) purchasing or participating in the purchase of an act of prostitution;
- (3) engaging in an act of prostitution;
- (4) pimping as defined in Penal Code section 266h;
- (5) pandering as defined in Penal Code section 266 i.
- (c) For the purpose of this section, prostitution has the same meaning as defined in Penal Code section 647(b).

§ 656.6. Involvement in a Vehicle-Related Qualifying Crime.

- (a) A victim or derivative victim who was the driver of a vehicle or water vehicle may be found to have been involved in the events leading to the qualifying crime if one of the following was present:
 - (1) the victim or derivative victim was driving the vehicle with a blood alcohol content exceeding the legal limit; or
 - (2) the victim or derivative victim was driving while under the influence of drugs.
- (b) If any of the factors listed in subsection (a) caused the qualifying crime, the application may be denied for participation in the qualifying crime under section 655.1.
- (c) A victim or derivative victim who was the passenger in a vehicle driven by a person under the influence of alcohol or drugs may be found to have been involved in the events leading to the vehicle-related qualifying crime if one of the following was present:
 - (1) the victim or derivative victim knew or reasonably should have known that the driver was under the influence of alcohol or drugs; or
 - (2) the victim or derivative victim was under the influence of alcohol or drugs and if sober should have reasonably known that the driver was under the influence of alcohol or drugs.
- (d) Subsection (c) shall not apply if:
 - (1) the victim is under 14 years of age; or
 - (2) the victim is between 14 and 17 years of age and the driver of the vehicle was the parent or guardian of the victim.
- (e) Subsection (c) may not apply if the victim is between 14 and 17 years of age and the driver of the vehicle is an adult who had responsibility for the victim other than the victim's parent or guardian.
- (f) A victim or derivative victim may be found to have been involved in the events leading to the qualifying crime of a hit and run (Vehicle Code section 20001) if both of the following are present:
 - (1) the victim or derivative victim acted in a blatant, wrongful or provoking manner; and

- (2) the victim's or derivative victim's conduct contributed to the events leading to the qualifying crime.

(g) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when evaluating the factors listed in subsections (a) and (f).

§ 656.7. Self Defense.

A victim or derivative victim shall not be found to be involved in the events leading to the qualifying crime if the sole involvement of the victim or derivative victim was in self-defense.

§ 656.8. Mitigation of Involvement in the Events Leading to the Qualifying Crime.

Factors that may be considered to mitigate involvement in the events leading to the qualifying crime include, but are not limited to:

- (a) the victim suffered an injury that was significantly more serious than reasonably could have been expected as a result of his or her involvement in the events leading to the qualifying crime;
- (b) another person involved in the events leading to the qualifying crime escalated his or her conduct in a manner not reasonably foreseeable by the victim or derivative victim;
- (c) a third party interfered in a manner not reasonably foreseeable by the victim or derivative victim.

§ 657.1. Failure to Cooperate with Law Enforcement.

- (a) A victim or derivative victim shall reasonably cooperate with any law enforcement agency in its investigation of the qualifying crime and the apprehension and conviction of any person involved in the qualifying crime.
- (b) A victim or derivative victim who knowingly and willingly failed to reasonably cooperate with a law enforcement agency in the investigation of the qualifying crime and the apprehension and conviction of any person involved in the qualifying crime shall not be eligible for assistance.
- (c) A victim or derivative victim who initially cooperated with a law enforcement agency as required by subsection (a), and was determined to be eligible for assistance, and subsequently knowingly and willingly failed to cooperate with a law enforcement agency, may be found eligible for assistance only during the period the victim or derivative victim cooperated with a law enforcement agency.
- (d) A derivative victim is not eligible for assistance if the victim of the same qualifying crime failed to cooperate

with a law enforcement agency as required by subdivision (a).

(e) Cooperation with a law enforcement agency includes, but is not limited to:

- (1) reporting the qualifying crime;
- (2) completely and truthfully responding to requests for information in a timely manner;
- (3) cooperating with identifying and apprehending any person involved in the qualifying crime; and
- (4) testifying in all proceedings, including restitution proceedings, as required.

(f) A victim or derivative victim whose conduct adversely affected the ability of a law enforcement agency either to investigate a qualifying crime, or to apprehend or convict any person involved in the qualifying crime may be found to have failed to cooperate with a law enforcement agency.

(1) A victim or derivative victim whose action or failure to act required a law enforcement agency to expend additional effort to apprehend or convict any person involved in the qualifying crime may be found to have failed to cooperate with a law enforcement agency.

(2) A victim or derivative victim whose action or failure to act unreasonably impeded or impaired the investigation of the qualifying crime, or the apprehension or conviction of any person involved in the qualifying crime may be found to have failed to cooperate with a law enforcement agency.

(g) In order to determine that a victim or derivative victim failed to cooperate with a law enforcement agency for a delay in reporting the qualifying crime, the delay must have adversely affected a law enforcement agency as described in subsection (f).

(h) The failure of a victim or derivative victim to perform any of the duties described in subsection (e)(2) through (4) may be found to be a failure to cooperate with a law enforcement agency even if the failure did not adversely affect a law enforcement agency as described in subsection (f).

(i) Factors that may be considered when assessing a victim's or derivative victim's cooperation with a law enforcement agency include, but are not limited to:

- (1) age;
- (2) physical condition;
- (3) psychological or emotional condition;
- (4) compelling health or personal safety factors;
- (5) reasonable fear of retaliation or harm to self or family.

(j) The factors listed in subsection (i) shall be considered when assessing a minor victim's cooperation with a law enforcement agency.

(k) The assessment of a victim's or derivative victim's cooperation with a law enforcement agency shall be based on all available evidence, including supplemental crime reports.

(l) The eligibility of a minor victim shall not be affected by the failure of the minor victim's parent, legal custodian, or legal guardian to cooperate with a law enforcement agency.

(m) A minor derivative victim shall not be eligible if both of the following are true:

(1) the minor derivative victim's parent, legal custodian, or legal guardian is the victim through whom the minor seeks to qualify as a derivative victim; and

(2) the person described in subsection (m)(1) failed to cooperate with a law enforcement agency.

(n) An application from a non-offending parent concerning a child sexual abuse qualifying crime shall not be denied under subsection (a) for failing to timely report the qualifying crime to a law enforcement agency if the non-offending parent otherwise cooperated with a law enforcement agency.

(o) For the purposes of this section, "law enforcement agency" includes a child protective services agency.

(p) For the purposes of this section, "conviction" shall include the imposition of restitution.

§ 657.2. Failure to Cooperate with Law Enforcement in a Domestic Violence Qualifying Crime.

(a) Factors that may be considered when determining whether a victim of a domestic violence qualifying crime cooperated with a law enforcement agency under section 657.1 include, but are not limited to:

- (1) the qualifying crime was reported to law enforcement;
- (2) the perpetrator was prosecuted for the qualifying crime;
- (3) the perpetrator was enrolled in a batterers' program or its predecessor domestic violence diversion program as a result of the qualifying crime;
- (4) the perpetrator was not prosecuted due to factors not related to the victim's actions.

(b) A victim of a domestic violence qualifying crime who engaged in any of the following conduct may be found to have failed to cooperate with a law enforcement agency in the investigation of the qualifying crime, and the apprehension and conviction of any person involved in the qualifying crime:

- (1) requested in writing that the suspect not be prosecuted for the qualifying crime;

- (2) refused to testify when legally served with a subpoena in a proceeding related to the prosecution of the qualifying crime;
- (3) committed perjury relating to the qualifying crime;
- (4) did not completely and truthfully respond to a request for information, evidence or assistance in a timely manner, unless circumstances beyond the victim's control prevented the victim from complying.
- (c) For the purpose of this section, "domestic violence" shall have the same meaning as in Penal Code section 13700(b).

§ 657.3. Failure to Cooperate with Board or Staff.

- (a) An applicant shall cooperate with the Board and its staff, and the staff of a joint powers victim witness center in the verification of all information necessary to determine eligibility.
- (b) An application may be denied for an applicant's failure to comply with subsection (a).
- (c) An applicant may be found to have failed to cooperate under subsection (a) if both of the following are present:
 - (1) the applicant has information that is needed to process the application available to him or her, or which the applicant may reasonably obtain; and
 - (2) the applicant failed to provide the information after being requested to do so.

Article 6.6. Property Tax Relief

§ 670. Certified List.

Lists of approved claims compiled by county assessors and presented to the State Controller for payment in accordance with Sec. 32, Chapter 1, Statutes of 1968 (First Extraordinary Session) shall contain a certificate reading as follows:

I certify that I am the duly qualified and acting Assessor of the County of _____; that each claim in the accompanying list has been processed and verified in accordance with Chapter 1, Statutes of 1968, First Extraordinary Session, and Section 135, Chapter 1, Title 18, California Administrative Code, and is approved for payment thereunder;

That I have not violated any of the provisions of Government Code Sections 1090-1096, inclusive.

§ 671. Machine Processable Media.

In lieu of the certificate required under Section 670, claims recorded on and presented in the form of electronic tapes, punched cards, or other machine processable

media, shall be accompanied by a certificate reading as follows:

I certify that I am the duly qualified and acting Assessor of the County of _____; that each claim recorded on the accompanying electronic tape, punched cards, or machine processable media has been processed and verified in accordance with Chapter 1, Statutes of 1968, First Extraordinary Session, and Section 135, Chapter 1, Title 18, California Administrative Code, and is approved for payment thereunder; that a written reproduction listing each claimant was prepared therefrom and will be retained as a part of the official records of my office. That have not violated any of the provisions of Government Code Sections 1090-1096, inclusive.

§ 672. Motion Pictures.

A claim presented to the controller pursuant to chapter 927, Statutes of 1968, shall be accompanied by a certificate of an authorized representative of the local taxing authority, as follows;

I hereby certify under penalty of perjury that I am a duly appointed, qualified and acting officer of the herein named local taxing authority; that the within claim is based upon the records of assessed valuation and applicable tax rates for said local taxing authority and is in all respects true, correct, and in accordance with law; and that I have not violated any of the provisions of Government Code Sections 1090-1096, inclusive.

§ 673. Homeowner's Property Tax Exemption.

Claims presented to the controller pursuant to Section 33, Chapter 1, Statutes of 1968, First Extraordinary Session, shall be accompanied by a certificate of the Auditor of the City or County, as follows:

(a) County Auditor.

I certify that I am the duly qualified and acting Auditor of the County of _____; that the attached statement sets forth the amounts of exempt values granted in accordance with law for the homeowner's property tax exemption under Section 1d of Article XIII of the Constitution for said county, each city and school district or portion thereof within the county, each special district or subdivision or zone thereof or portion thereof within the county, for which a tax levy is carried on the county assessment roll; that I have correctly computed and shown on the attached statement the total amount of ad valorem tax loss to the county and the cities and districts resulting from such exemption, in accordance with the provisions of Chapter 1, Statutes of 1968, First Extraordinary Session, and Section 135, Chapter 1, Title 18, California Administrative Code; and certify, under penalty of

perjury, that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

(b) City Auditor.

I certify that I am the duly qualified and acting Auditor of the City of _____; that the taxes of said city are not collected by the county; that the attached statement sets forth the amounts of exempt values granted in accordance with law for the homeowner's property tax exemption under Section 1d of Article XIII of the Constitution for said city, each district, subdistrict, or special zone within the city for which a tax levy is carried on the city assessment roll, and the tax rates applicable to each; that I have correctly computed and shown on the attached statement the total amount of ad valorem tax loss to the city and the districts resulting from such exemption, in accordance with the provisions of Chapter 1, Statutes of 1968, First Extraordinary Session, and Section 135, Chapter 1, Title 18, California Administrative Code; and certify, under penalty of perjury, that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

§ 674. Business Inventory Tax Exemption.

Claims presented to the Controller pursuant to Section 16106 of the Government Code shall be accompanied by a certificate of the Auditor of the County as follows:

I certify that I am the duly qualified and acting Auditor of the County of _____; that the attached statement sets forth the amounts of exempt values granted in accordance with law for the Business Inventory Exemption under Section 219 of the Revenue and Taxation Code for said County, each city and school district or portion thereof within the County, each special district or subdivision or zone thereof or portion thereof within the County, for which a tax levy is carried on the county assessment roll; that I have correctly computed and shown on the attached statement the total amount of ad valorem tax loss to the county and the cities and districts resulting from such exemption, in accordance with the provisions of Section 219 of the Revenue and Taxation Code and Section 133, Chapter 1, Title 18, California Administrative Code; and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

§ 674.1. Livestock Head-Day Tax Reduction.

Claims presented to the Controller pursuant to Section 16106 of the Government Code shall be accompanied by a certificate of the Auditor of the County as follows:

I certify that I am the duly qualified and acting Auditor of the County of _____; that the attached statement sets forth the amounts of property tax reductions granted in

accordance with law for the Livestock Head-Day tax under Section 5523 of the Revenue and Taxation Code for said County, each city and school district or portion thereof within the County, for which a tax levy is carried on the county assessment roll; that I have correctly computed and shown on the attached statement the total amount of tax loss to the county and the cities and school districts resulting from such reductions, in accordance with the provisions of Part 11 of Division 1 of the Revenue and Taxation Code (commencing with Section 5501) and Section 1042, Chapter 1, Title 18, California Administrative Code; and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

Article 7. Invoice Claims

§ 675. Purchase of Materials and Supplies.

The State Controller shall issue no warrants for claims covering work or services or the purchase of materials, supplies or equipment, within the purview of Section 14780 of the Government Code, unless the contracts or invoices have first been approved or purchase orders issued by the Department of General Services.

§ 676. Specifications for Bids.

There shall be no qualifications in the specifications for any contract which will work for the advantage of any particular bidder or any class of bidders.

§ 677. Invoices.

(a) All invoices or vouchers shall be billed to the State of California or to a particular department, board, commission, agency, or officer thereof and shall be presented for allowance in accordance with the procedure set forth in these rules and regulations.

(b) Invoices or vouchers not on printed bill heads shall be signed by the vendor or person furnishing the supplies or service.

(c) Every invoice for the purchase of materials, supplies or equipment shall show the purchase order number under which the materials, supplies or equipment were purchased.

(d) Every invoice shall be properly itemized before a claim, based thereon, is filed for payment.

(e) Where claims for services are rendered under a contract, the claims shall show the agency contract number.

(f) An invoice will not be required from a lessor if the applicable lease is on file with the State Controller and the

State agency submits an itemized claim for payment in a form approved by the State Controller.

§ 678. Submission of Claims.

Claims for invoices may be submitted as frequently as desired. Where the amount involved is too large to be paid from revolving funds, invoices allowing discounts shall be submitted on special schedules, with a notation to the State Controller requesting an expeditious audit and issuance of the warrant. Invoices for amounts of \$50 or less exclusive of sales tax, and invoices payable by authorized bank drafts in the amount of \$500 or less inclusive of sales tax, are conclusively deemed to permit immediate payments from revolving funds when such funds are available, and such invoices shall be submitted when reimbursement of the revolving fund is claimed. Letters of transmittal covering claims are not required.

§ 679. Certificate Accompanying Claims.

The affidavit or certificate accompanying claims for payment of invoices, required by Section 624, will normally be worded as indicated in (a) below. For special types of services or invoices, in connection with which this standard wording would not be suitable, the certificate may be worded in accordance with such other subsection of this rule as may apply.

(a) Normal invoices.

"I hereby certify under penalty of perjury as follows:

"That I am a duly appointed, qualified and acting officer of the herein named state agency, department, board, commission, office, or institution; that the within claim is in all respects true, correct, and in accordance with law; that the services mentioned herein were actually rendered and supplies delivered to the state agency in accordance with the contract and law; that authorizations for purchases have been duly obtained wherever required and that amounts claimed and articles delivered comply therewith; that the amounts of any refunds to claimants indicated herein were received from such claimants by the herein named agency in excess of that legally due it under the law, or are otherwise lawfully due such claimants; that all of the expenditures herein set forth are in accordance with the current budget allotments and provisions as approved by the Budget Division of the State Department of Finance, and that none of the expenditures are in excess thereof; that there has been full compliance with all provisions or restrictions in the budget act or any other appropriation relating to expenditures herein; that the claimants named herein are each entitled to the amount specified opposite their respective names and actually have been paid or will be paid as allowed when warrant is received from the State Controller; that I have not violated any of the provisions of Sections 1090 to 1096,

inclusive, of the Government Code, in incurring the items of expense mentioned in the attached claim, or in any other way; that any disaster service worker for whom compensation or reimbursement for expenses incurred is claimed herein has, if required by law, taken, subscribed, and filed the oath set forth in Section 3103 of the Government Code."

(b) Railroad invoices for claims under Section 1202.2, Public Utilities Code.

"I hereby certify under penalty of perjury as follows:

"That I am a duly appointed, qualified, and acting officer of the herein named state agency; that the within claim represents the share of the cost of maintaining automatic grade crossing protection assigned to the public agencies by the Public Utilities Commission pursuant to Section 1202.2 of the Public Utilities Code; that the amount of the within claim has been computed in accordance with the Decisions of the Public Utilities Commission and is true and correct; that I have not violated any of the provisions of Sections 1090 to 1096, inclusive, Government Code, in incurring the expenses mentioned in the attached claim, or in any other way; that all of the expenditures herein set forth are in accordance with the current budget allotments and provisions and that none of the expenditures is in excess thereof; that each claimant named herein is entitled to the amount specified opposite his name."

§ 680. Delayed Submission of Invoices.

Invoices shall be submitted with claims for cost of securities purchased as investment of state funds. However, if circumstances exist which prevent the timely submission of invoices, the Controller may issue and deliver warrants for cost of securities. In such event an explanation must accompany the claim and the invoices must be submitted to the Controller within seven (7) calendar days after presentment of the claim.

Article 8. Traveling Expenses

§ 700. Scope.

It is the purpose of this Article to provide reimbursement for the necessary out-of-pocket expenses incurred by state officers and employees because of travel on official state business. Each state agency is charged with the responsibility of determining the necessity for, and the method of, travel, provided, however, that once such necessity has been determined, reimbursement shall be governed by these rules. It is the intent of the Board that state agencies shall not have discretion to provide reimbursement at a lower amount than contained in Board rules, unless such discretion is specifically mentioned. Language of this article providing a specific time,

distance, or amount shall be rigidly interpreted. Language such as "not more than" or "up to" a specified amount shall be interpreted as a rigid ceiling with departmental discretion below such ceiling.

§ 701. Definitions.

For the purposes of this Article, the following definitions will apply:

(a) Headquarters. Headquarters shall be established for each state officer and employee and shall be defined as the place where the officer or employee spends the largest portion of his regular workdays or working time, or the place to which he returns on completion of special assignments, or as the Board of Control may define in special situations.

(1) Where an office building or similar definite place constitutes the employee's headquarters, no per diem expenses shall be allowed at any location within 25 miles of said headquarters as determined by the normal commute distance.

(2) Where the major portion of an employee's working time is spent within a specifically assigned or limited geographical area, such as a patrol area or beat where the same routes are traveled frequently and routinely on one-day trips, or such as different campuses or teaching locations associated with a college, no per diem expenses shall be allowed at any location within 25 miles from any point in this assigned area as determined by the normal commute distance.

In order to insure equity in special cases, agency heads may disregard this subsection and authorize individual claims based on subsection (1) of this rule.

(3) In cases where adherence to the 25-mile limitation creates an unusual and unavoidable hardship to the officer or employee, exceptions may be granted by the Board of Control.

(4) Employees on travel status for less than 24 hours may claim subsistence expenses incurred before or after the regularly scheduled work day in accordance with Section 706(c)(1) provided the departure time or return time exceeds the regularly scheduled work day by one hour.

(b) Residence. A place of primary dwelling shall be designated for each state officer and employee. A primary dwelling shall be defined as the actual dwelling place of the employee and shall be determined without regard to any other legal or mailing address. However, if an employee is temporarily required to dwell away from his primary dwelling place due to official travel away from headquarters, and said primary dwelling is either inhabited by his dependents or is maintained by the employee at a net monthly expense in excess of \$200,

such dwelling place may be continued as the employee's designated primary dwelling.

(1) No reimbursement for per diem or other subsistence expenses shall be allowed on the premises of an employee's residence.

(2) An employee shall have only one residence at which travel expenses are prohibited. In any case, where an employee maintains more than one dwelling, meeting the definition of residence set forth in subsection (b) above, the agency head shall designate the one place which bears the most logical relationship to the employee's headquarters.

(c) Travel Expenses. Travel expenses include:

(1) Per Diem Expenses. Per diem expenses consist of the charges and attendant expenses for meals and lodging and all charges for personal expenses incurred while on travel status.

(2) Business Expenses. Business expenses consist of the charges for business phone calls and telegrams; emergency clothing, equipment or supply purchases; and all other charges necessary to the completion of official business. Any emergency purchase shall be explained, and if over \$25 must be approved by the department head, deputy, or chief administrative officer.

(d) Protective Services. A member of the California State Police assigned as provided by Government Code Section 14613, or a member of the California Highway Patrol assigned to supplement State Police capabilities under Section 14613, may claim subsistence allowance for in-state travel as follows:

(1) If expenses actually incurred by the employee while traveling with the protected individual exceed the per diem allowance authorized for in-state travel, the employee may elect to claim the subsistence allowance authorized by Board of Control Rule 706(b).

(2) Any expense claim submitted under (1), must contain a certification by the Chief of the California State Police naming the individual being protected and verifying that the travel expenses were incurred while the claimant was assigned to protect said individual.

(3) Claims submitted under this section shall not be subject to the limitations of subsection 701(a).

(e) Faculty Exchange Program. When an employee of the California State University and Colleges participates in a faculty exchange program at a campus more than 160 kilometers (100 miles) distance from the home campus or his residence, whichever is less, transportation expenses for one round trip shall be allowed in accordance with Section 711.

§ 702. Discontinuance of Subsistence Allowances.

(a) Except in the case of state elected officials, Short Term Subsistence Allowances authorized by Rule 706(a)(1) will be discontinued after the 30th consecutive day in one location unless a continuation has been approved in advance by the department director, or equivalent.

(b) Long-Term and Non-Commercial Subsistence Allowances authorized by Rule 706(a)(2), 706(a)(3) may be continued beyond thirty days without the approval of the department director, or equivalent.

§ 703. Report of Reimbursed Expense Time Away from Headquarters.

(a) Any officer or employee whose headquarters is fixed by the Board of Control, who spends the equivalent of more than 10 days a month in his official duties, who receives a salary plus subsistence expenses, and who is away from headquarters and claims travel expense in any one location for more days in any one month than he spent at his headquarters, in each of three or more months in any calendar year, shall file a report thereof with the board.

(b) The report shall contain a statement of the days for which travel expense was claimed away from headquarters during the year and the location at which such expense was incurred. Such reports shall specify those circumstances inherent in the reportee's work assignments which will justify continuation of the headquarters as established by the board. Such reports shall be submitted by the 15th of the month following the third month in which the travel expense was claimed.

§ 704. Expense Account Form.

(a) No travel expense account shall be paid unless rendered upon a Travel Expense Claim, Standard Form 262 or upon some other form approved by the Controller. All expense accounts shall be properly itemized, accompanied by the necessary vouchers and approved by the duly authorized officer. It is the responsibility of the officer approving the claim to ascertain the necessity and reasonableness of incurring expenses for which reimbursement is claimed.

(b) Expense accounts shall be rendered at least once a month and not more often than twice a month except that if the amount claimable for any month does not exceed \$10, the filing may be deferred until the total amount claimable exceeds \$10 or until June 30, whichever occurs first. At the end of a fiscal year, travel expenses claimed for July 1 and beyond must be on a separate travel expense claim from those claimed for June 30 or earlier.

In no event shall expense accounts totaling less than \$1 be rendered or paid.

(c) Each officer and employee when making a claim for travel expenses must show the inclusive dates of each trip for which allowances are claimed and the times of departure and return. Time of departure and return, as used herein, means the time employee starts from or returns to his office or, when leaving on a trip or returning from a trip without going to the office, his home.

(d) Each officer and employee must state the purpose or objective of each trip for which reimbursement is claimed, and for each meal for which reimbursement is claimed under Rules 707 and 708.

(e) Each state officer and employee must show his headquarters address and his primary dwelling address on the Travel Expense Claim. Employees claiming subsistence expenses pursuant to Section 706(a)(2)(B) will show their headquarters address as the address of their primary dwelling.

(f) Each claim for the payment of travel expenses shall contain a certification as follows:

I hereby certify that the above is a true statement of the travel expenses incurred by me in accordance with Board of Control rules in the service of the State of California, and that all items shown were for the official business of the State of California.

§ 706. Subsistence Allowance.

When state officers and employees are on travel status as defined in this Article, payment of a subsistence allowance will be authorized by the Board of Control for both in-state and out-of-state travel. The circumstances of travel will determine the rate allowed. Agencies will authorize payment for lodging, meals and incidental expenses as claimed by the employee in accordance with Section 706(c). Each agency will be responsible for determining which of the following allowances is applicable:

(a) In-State Subsistence Allowance.

(1) Short-Term Allowance. A short-term allowance will be authorized when the circumstances and duration of travel are such that the traveler incurs expenses comparable to those arising from the use of good, moderately priced establishments, catering to the general public. The short-term allowance is intended for trips of such duration that weekly or monthly rates are not obtainable.

(2) Long-Term Allowance. A long-term allowance will be authorized when the circumstances of travel are such that the traveler incurs expenses in one location comparable to those arising from the use of establishments catering to the long-term visitor.

(A) An employee on long-term field assignment away from his headquarters who maintains a permanent residence elsewhere while living at the job location will be authorized the full allowance provided one of the following conditions exists:

1. Permanent residence is occupied by employee's dependents, or
2. Permanent residence is being maintained at a net expense to him in excess of \$200 per month.

To qualify for this allowance, an employee must submit whatever evidence his agency may require substantiating the existence of either condition 1 or 2.

(B) An employee on long-term field assignment away from his headquarters who does not maintain a permanent residence away from the job site in accordance with Section 706(a)(2)(A) will be authorized an allowance equal to one-half the amount of the long-term allowance rounded to the nearest dollar.

(C) Employees will be eligible to claim the appropriate allowance for every 24-hour period on travel status. Allowances for partial day travel status will be as follows:

1. Less than 12 hours, one-half the appropriate allowance, rounded to the nearest dollar,
2. From 12 to 24 hours, the full allowance

(3) Non-Commercial Allowance. A non-commercial allowance will be authorized when the circumstances of travel are such that the traveler incurs expenses comparable to those arising from the use of non-commercial subsistence facilities such as, but not limited to, house trailers or field camping equipment.

(A) Employees will be eligible to claim this allowance for every 24-hour period on travel status. Allowances for partial day travel status will be as follows:

1. Less than 12 hours, one-half the allowance, rounded to the nearest dollar,
2. From 12 to 24 hours, the full allowance

(b) Out-Of-State Subsistence Allowance. For out-of-state travel, state elected officials and other employees will be reimbursed actual lodging expenses, supported by a voucher, and reimbursed for meal and incidental expenses in accordance with Section 706(c).

(1) Out-of-Country Subsistence Allowance. When employees are authorized to travel outside the continental United States, and continue to maintain a permanent residence either occupied by the employees' dependents or maintained at a net monthly expense in excess of \$200, reimbursement of subsistence expenses may exceed established rates if the agency obtains advance approval of specific rates from the Board of Control.

(c) Computation Of Allowances.

(1) In computing the allowance for travel, the following reimbursement will be allowed in any 24-hour period or fractional part thereof:

Statewide

Designated High-Cost Areas

Lodging \$35.00 Up to \$43.00

(with receipt)

Breakfast 4.00..... 4.00

Lunch 7.25..... 7.25

Dinner 12.00..... 12.00

(2) Designated High-Cost Areas. To be eligible for the higher lodging separate expense account. This section shall not apply to committees of the Legislature or of either house thereof nor to employees of any such committee.

(e) Subsistence Expense Negotiated or Paid for by the State. When a significant portion of the subsistence expenses (either meals or lodging) are negotiated or otherwise paid for by the State (e.g., billed to the State, paid by a group leader, included in overnight train fare, etc.), the employee will not be reimbursed for such expenses. The employee will be allowed to claim reimbursement in accordance with Section 706(c) for any subsistence not provided.

§ 708. Attending Conventions, Conferences, or Business Meetings.

(a) All regulations governing short-term travel and subsistence allowances will apply except that employees may be reimbursed for actual subsistence expenses, supported by voucher, when the convention or conference is planned and arranged by a non-state agency if such expenses are beyond the control of the employees.

(b) Registration fees will be allowed except for conventions or conferences called by a state agency for the dissemination of information to its own employees. Reimbursement for registration fees exceeding \$50 must be approved by the department head or delegated representative.

(c) Where more than two individuals (officers or employees) from the same department are attending the same convention or conference, each claim must be approved by the department head or delegated representative. This requirement does not apply to a convention or conference called by a state department for purposes of instruction or dissemination of information to its own officers or employees.

(d) Exceptions to these rules may be approved in advance by the Board of Control.

§ 709. Contracting for Subsistence Expenses.

Agreements may be entered into with restaurants, hotels, and lodging houses for the furnishing of subsistence to groups of state employees when such method of handling is advantageous to the State. When such agreements are entered into, the vendor may receive payment either from the group leader or by billing the State on a regular itemized invoice.

(a) Group leaders who pay subsistence expenses for other personnel may claim reimbursement by submitting a vendor's invoice and a list of names of the employees whose expenses were paid.

(b) Members of a group who have some portion of their subsistence expenses paid by the group leader may claim reimbursement for the remainder of their actual and necessary subsistence expenses in accordance with Section 706(e).

(c) The total payment under any such agreement shall not exceed the aggregate of the subsistence allowances otherwise claimable by the participating employees.

§ 710. Receipts or Vouchers.

(a) Receipts or vouchers shall be submitted for every item of expense except as follows:

(1) Railroad and bus fares, where the fares are available in published tariffs, and travel is wholly within the State of California. However, vouchers must be submitted in the case of cash purchases of airplane travel, Pullman accommodations, or extra fare train, travel by any common carrier outside of the State except taxi or hotel bus fares.

(2) Subsistence allowances, except when specified.

(3) Street car, ferry fares, bridge and road tolls.

(4) Long distance telephone or telegraph charges, if date, place and party called are shown, unless the telephone call is in excess of \$2.50 in which case vouchers or other supporting evidence shall be provided.

(5) Taxi or hotel bus fares, when necessary upon official business.

(6) All legal expenditures of \$1 or less.

(7) Parking fees of \$3.50 or less for any one continuous period of parking.

(b) In cases where receipts cannot be obtained or have been lost, a statement to that effect shall be made in the expense account and the reason given. In the absence of satisfactory explanation the amount involved shall not be allowed.

§ 711. Transportation Expenses.

(a) Transportation expenses consist of the charges for commercial carrier fares; private car mileage allowances; emergency repairs to state cars; overnight and day parking of state or privately-owned cars; bridge and road tolls; necessary taxi, bus, or streetcar fares; and all other charges essential to the transport from and to the official headquarters.

(b) Reimbursement will be made only for the method of transportation which is in the best interest of the State, considering both direct expense as well as the officer's or employee's time. Provided the mode of transportation selected does not conflict with the needs of the agency, the officer or employee may use a more expensive form of transportation and be reimbursed at the amount required for a less expensive mode of travel. Both modes of transportation will be shown on the travel claim with reference to this section.

(c) In any case in which reimbursement for expenses of transportation by private automobile or privately-owned airplane is claimed, the license number of the automobile or the civilian airplane license number as well as the name of each state officer, employee, or board, commission, or authority member transported on the trip shall be stated. As such reimbursement is for the expense of use of the automobile or airplane regardless of the number of persons transported, no reimbursement for such transportation shall be allowed any passenger in any automobile or airplane operated by another such officer, employee or member.

In the determination of fares or mileage paid for transportation by airplane, the point of origin or return shall be an appropriate airport facility serving the area of the employee's headquarters or residence, whichever results in the lesser distance or amount.

(d) Expenses arising from travel between home or garage and headquarters shall not be allowed. Where a trip is commenced or terminated at claimant's home, the distance traveled shall be computed from either his headquarters or home, whichever shall result in the lesser distance.

Exceptions to the above are:

(1) Where such expenses are incurred by call back for overtime work necessitating more than one trip to the work location on a normal work day or by reason of any call back on an employee's normal day off.

(2) When the headquarters of a permanent, full time employee is located 24 or more kilometers (15 or more road miles) one way from the nearest residential area with available housing, the appointing power may authorize payment of expenses incurred by an employee in the use of a privately owned vehicle.

(A) The authorizing agency must obtain prior approval from the Board of Control with regard to the location of

the nearest residential area with available housing and amount of mileage to be paid.

(B) Reimbursement will be at the rate provided in Rule 714(b) for distance driven and authorized in accordance with this rule and being in excess of 48 kilometers (30 miles) round trip.

(C) The term "available housing" as used in this subsection is intended to relate primarily to the quantity of housing available and not to its quality or cost.

(D) Distance will be computed from a location within the selected nearest residential area to the employee's work headquarters by the most direct road route and not the actual miles driven.

(E) If an employee's residence is not located in the designated residential area, but is more than 48 kilometers (30 miles) round trip from his remote location headquarters, he may be reimbursed for travel from his residence or from the selected location within the designated residential area, whichever is less.

(F) Payments will be authorized only if the appointing power has determined that the employee cannot participate in a department sponsored car or van pool.

(G) An employee whose headquarters is designated as remote and who lives in the designated residential area who is required to report to a worksite other than headquarters for a particular day, and who is required to use his own vehicle shall receive payment for the round trip from the designated residential area to the worksite.

(H) An employee whose headquarters is designated as remote and who lives less than 24 kilometers (15 miles) from headquarters, who is required to report to a worksite other than headquarters for a particular day, and who is required to use his own vehicle shall receive payment for the round trip from his own residence to the worksite or his headquarters to the worksite, whichever is less.

(I) An employee whose headquarters is designated as remote, who does not live in the designated area but lives more than 24 kilometers (15 miles) from his headquarters, who is required to report to a worksite other than headquarters for a particular day and who is required to use his own vehicle shall receive payment for the actual round-trip distance by the most direct route, not to exceed:

1. The distance from the designated residential area to the worksite, or
2. The distance from the employee's headquarters to the worksite, whichever is greater.

(3) When travel to or from a common carrier commences or terminates before or after the regularly scheduled work day or on a regularly scheduled day off, distance may be computed from the employee's residence in accordance with Section 714(b).

(e) When an employee's regular work assignment requires him to rotate among two or more posts or work stations at different geographic locations within a metropolitan area either to protect state property or state personnel and he is instructed to report directly to the designated post for a full shift, distance from his home to the designated post and return shall be limited to that which exceeds the round trip distance from his home to his designated headquarters, and shall be computed at the rate set forth under rule 714(b). For the purpose of determining the correct distance to be allowed in these situations, headquarters shall be a designated single geographic location or address regardless of whether the employee spends a major or significant portion of his working time there.

(f) No reimbursement will be allowed for transportation expense when the employee uses a privately-owned motorcycle or motor-driven cycle in the conduct of official state business.

§ 712. Special Transportation.

(a) Where it is necessary to hire special conveyances, except automobiles, a full explanation, stating the facts constituting the necessity, shall accompany the expense claim.

(b) Commercial Automobile Rental.

(1) Reimbursement will be for actual and necessary costs of such rental when substantiated by a voucher. Where it is necessary to pay extra charges or premium rental rates for air conditioning, convertible bodystyle, expensive, or other luxury items, a full explanation shall accompany the expense claim.

(2) Reimbursement will not be made for a damage waiver. Reimbursement will be made to the officer or employee for any loss necessarily sustained by him by reason of his not having purchased such waiver.

(c) Where a privately owned bicycle is used in the conduct of official state business, the employee will be allowed to claim 4 cents per 1.6 kilometers (mile).

§ 713. Transportation by Aircraft.

(a) Scheduled Airline. Claims for transportation by scheduled airline shall be allowed at the lowest fare available in conformity with the regular published tariffs for scheduled airlines in effect on the date of origination of the flight. Claims for reimbursement of higher fare or extra charges for transportation by scheduled airline may be allowed if accompanied by a full explanation stating the facts constituting the official necessity.

(b) Privately-Owned Aircraft. A claim of an employee for transportation by privately-owned aircraft shall be allowed where he has obtained prior approval of the use

of this form of transportation from his department. If an employee is to act as pilot, he must satisfy the requirements of the Insurance Officer, Department of General Services, as to liability insurance coverage. The Insurance Officer shall file approved authorizations for such allowance with the State Controller.

(1) Reimbursement for use of the employee's privately-owned aircraft shall be made at the rate of 28 cents per statute mile, or 17.5 cents per kilometer.

(A) Distance shall be computed on the basis of shortest air route from origin to destination, using airways whenever possible. Distance shown on claim shall be clearly marked "Air Distance."

(B) When the trip is limited solely to state business and the "Air Distance" cannot accurately be computed from origin to destination, the department director may authorize reimbursement for the actual cost of renting a plane.

(2) Reimbursement for use of a rented aircraft will be for actual and necessary costs of such rental when substantiated by voucher.

(A) Reimbursement will be authorized only for the size and type aircraft necessary to complete the assignment.

(3) When substantiated by a voucher, reimbursement will be made for actual and necessary expenses for landing and parking fees in connection with the use of the aircraft. Reimbursement will not be allowed for storage or parking fees at the location where the privately-owned aircraft is normally stored.

(4) If an employee is to act as pilot and carry passengers he must, in addition to Federal Aviation Administration Regulations, have previously logged as a licensed private pilot in command of an aircraft at least 250 hours of actual flight. In addition, the employee pilot must have logged, as a pilot in command of an aircraft, at least 40 hours of actual flight within the preceding 12 months. Any employee pilot who has carried or intends to carry passengers may be required to present his log book substantiating that he meets these requirements. For the purpose of this rule, the term passenger shall be defined as any person other than the pilot traveling in the aircraft. An employee pilot who carries a passenger but fails to meet the above qualifications is not entitled to any reimbursement for that transportation expense.

(c) Payment of Fare. Payment for transportation by aircraft may be made by (1) cash, (2) credit card, or (3) ticket order. In cases where payment is made by cash, the travel expense claim must be accompanied by the traveler's flight coupon if one was issued, in accordance with Rule 710(a)(1). If no flight coupon was issued, as may be the case with chartered or private aircraft, a formal receipt must be submitted. If payment was made

by credit card or by ticket order, this fact should be noted on the travel expense claim.

(d) Air Travel Insurance. Any state agency may insure its officers and employees against injury or death arising from aircraft accidents incurred while flying on state business in any except regularly scheduled passenger aircraft, subject to the following conditions:

(1) Such insurance shall be provided only to those employees who are directed to fly to fulfill their work requirements. Such insurance coverage shall not be provided where the use of a privately-owned aircraft is for point-to-point transportation and is a result of a voluntary response from the employee, even though such usage may be advantageous to the State.

(2) Application for such insurance shall be submitted to, and the insurance procured by, the Department of General Services.

(3) The maximum limit of such insurance shall be \$15,000 in the case of death or dismemberment for each officer and employee.

§ 714. Transportation by Automobile.

(a) Where claimant is authorized to operate a privately owned automobile even though a state automobile is available, a rate of 16 .5 cents per 1.6 kilometers (mile) will be allowed.

(b) Where a privately owned automobile is used because, by supervisory decision, it has been determined that a state automobile is not available to the employee, the employee will be allowed to claim 20.5 cents per 1.6 kilometers (mile) without certification or up to 25 cents per 1.6 kilometers (mile) with certification. Even though a state automobile may in fact be on hand, it may not be available to the employee because it is reserved for other purposes, because it is more advantageous economically to the State for the employee to use his own automobile, or because use of a state automobile is unreasonable considering all circumstances in a particular situation. In determining economic advantage of state versus private automobile, a supervisor will include the following in his consideration.

(1) Distance to be traveled and duration of trip, as these affect direct costs.

(2) Location of the employee's residence, regular workplace, destination, and location of available state automobiles; as these factors affect employee time and distance traveled.

The Board of Control may institute whatever controls deemed appropriate over payment of this allowance by any state agency whenever there is reason to believe that proper control is not being exercised by supervision within the agency.

(c) Where use of a privately owned automobile is authorized for travel to or from a common carrier terminal and the automobile is not parked at the terminal during the period of absence, a rate of 41 cents up to 50 cents per 1.6 kilometers (mile) may be claimed only while the employee is an occupant of the vehicle for the distance between the terminal and his residence or headquarters, whichever is less, except if the employee commences or terminates travel before or after his regularly scheduled work day or on a regularly scheduled day off, mileage may be computed from his residence. Claims in excess of 41 cents per 1.6 kilometers (mile) must have the certification required by Section 714(b).

(d) Ferry, bridge, or toll road charges shall be allowed.

(e) Charges shall be allowed for necessary parking while on state business for:

(1) Day parking when on trips away from the headquarters office and residence.

(2) Overnight public parking when on trips away from the headquarters city and city of residence. Claim should not be made if expense-free overnight parking is available.

(3) Day parking adjacent to claimant's headquarters, provided that claimant had other reimbursable private car expenses for the same day.

(f) Expenses for gasoline or routine repairs shall not be allowed.

(g) The rates of reimbursement for mileage set out in this section include the cost of maintaining liability insurance at the minimum amount prescribed by law and collision insurance sufficient to cover the reasonable value of the vehicle, less a standard deductible. When a privately owned vehicle operated by an officer, agent or employee is damaged by collision or receives other accidental damage, reasonable reimbursement for repair shall be allowed under the following conditions:

(1) The damage occurred while the vehicle was being used on official state business with the permission or authorization of his employing agency;

(2) The vehicle was damaged through no fault of the officer, agent, or employee;

(3) The amount claimed is an actual loss to the officer, agent, or employee, which is not recoverable either directly from or through the insurance coverage of any of the parties involved in the accident;

(4) The amount of the loss claimed does not result from a decision of an officer, agent or employee not to maintain collision coverage;

(5) The claim is processed in accordance with the procedures prescribed by the Department of General Services.

(h) Allowance of transportation expenses by privately owned automobile incurred in travel outside the State is limited by these rules and the requirement of the authorization specified in Section 706(d).

(i) Specialized Vehicles. Employees who must operate a motor vehicle on official state business and who, because of a physical disability, may operate only specially equipped or modified vehicles may claim up to 31 cents per 1.6 kilometers (mile) with certification in accordance with Rule 714(b). Supervisors who approve claims pursuant to this subsection have the responsibility of determining the need for the use of such vehicles.

§ 715. Railroad Transportation.

(a) No more than actual fare on any transportation service, in accordance with the latest tariffs at the time the trip was made, shall be allowed. Special rates and round-trip rates shall be used whenever possible.

(b) Reimbursement for roomette Pullman accommodations will be allowed. Where it is necessary to use Pullman accommodations more expensive than a roomette, a full explanation stating the facts constituting the official necessity shall accompany the expense account together with a receipted voucher.

(c) Unused portions of railroad and sleeping car tickets are subject to refunds and all steps necessary to secure refunds on such tickets shall be taken.

(d) Any unusual delay or a deviation from the shortest, usually traveled route shall be explained unless connected with return trip out-of-state deportation travel authorized by the Department of Health or the Department of the Youth Authority.

(e) In connection with return trip out-of-state deportation travel authorized by the Department of Health or the Department of the Youth Authority, reimbursement for subsistence and transportation expenses shall be made on the basis of shortest usually traveled routes, conventional train time, first class fare, and lower standard Pullman rates as certified to by a railroad passenger agent.

(f) Meals incurred while on overnight train travel will be reimbursed in accordance with Section 706(c).

(g) Tickets for rail transportation or Pullman accommodations may be purchased (1) by the individual, (2) by credit card, or (3) ticket order. If purchased by credit card, or by ticket order this fact should be noted on the individual's expense claim.

§ 717. Return of Deceased Employees.

When a state officer or employee dies while traveling on official state business, reimbursement may be claimed for actual and reasonable expenses incurred in returning the

remains to the place of burial, up to the amount necessary to return the remains to the official headquarters of the deceased. Claims for the reimbursement of such expenses shall be submitted to the State Controller by the person responsible for payment of the funeral expenses. Each claim shall bear a certification by the appointing power that the employee was traveling on official state business at the time of his death. Actual costs of the following will be considered necessary travel expenses for which reimbursement will be made.

(a) In all cases, regardless of mode of transportation:

- (1) Telephone or telegraph charges for shipment arrangements.
- (2) Transportation of the remains to the funeral home, preparing the remains for shipment, not in excess of \$1 per 1.6 kilometers (mile) one way.

(b) When a portion of the shipment is by common carrier:

- (1) Transportation by common carrier to the receiving point nearest the official headquarters or place of burial, whichever is less.
 - (2) Transportation not in excess of 50 cents per 1.6 kilometers (mile) one way from a funeral home to a shipping station and from the receiving station determined by paragraph (1) above to the headquarters location or place of burial, as applicable.
 - (3) Outside transportation case and casket or rental metal transfer case, not to exceed \$100 plus taxes.
- (c) When shipment is made by funeral coach alone, transportation costs not to exceed 50 cents per 1.6 kilometers (mile) one way, from the pick-up point to the city in which the official headquarters of the deceased was located, or to the place of burial, whichever is the shorter distance.

§ 718. Travel Allowances While on Sick Leave, Vacation or Compensating Time Off (CTO).

(a) When a state officer or employee is granted sick leave while away from his headquarters for purposes of state business, such officer or employee may claim reimbursement for travel expenses in accordance with the allowances prescribed by these rules during such sick leave, provided the allowances for travel expenses shall not be authorized for a period exceeding three days. The time limitation prescribed by this section may be exceeded in unusual cases approved by the Board of Control.

(b) When a state officer or employee is authorized time off on vacation or CTO while away from his headquarters on state business, reimbursement for subsistence allowance during such vacation or CTO may not be claimed. The provisions of this section may be waived by

an agency for employees claiming other than short-term allowances who are

- (1) authorized time off on CTO, or
- (2) employees in seasonal agricultural work authorized time off on vacation.

Article 10. Agents Transporting Prisoners, Patients, and Wards

§ 775. Construction and Effect.

The provisions of Article 8, Traveling Expenses, govern the charges and expenses of agents transporting prisoners, patients, and wards, except to the extent that Article 8 is modified by this article.

§ 776. Claims of Sheriffs.

(a) General Provisions. Sheriffs are entitled to reimbursement for expenses incurred in the transportation of prisoners, patients, or wards to state institutions except in the case of transportation of criminal insane to state hospitals or placing a defendant in a diagnostic facility, which is chargeable to the county.

(b) Allowable Expenses. The general traveling expense rules of the State Board of Control will be followed in presenting claims with the following limitations:

(1) Subsistence allowances shall be in accordance with Rule 706(a)(1), Short- Term Allowance, and Rule 706(c), Computation of Allowances, except that no per diem shall be paid for any length of travel which totals less than 8 hours. Meal subsistence when the travel time is more than 4 but less than 8 hours will be paid according to the rate established in Rule 706(c), Business Related Meals. Subsistence may be claimed for each county employee who is actually transporting prisoners, patients, or wards and any non-county employee who may act as a matron.

(2) Any salary allowance reimbursement to a non-county employee acting as a matron shall be computed at the minimum entry level hourly rate for a comparable county employee.

(3) Distance expenses will be paid for total round trip distance at the rate of 18.5 cents per 1.6 kilometer (mile). The same rate shall be paid regardless of type of vehicle.

(4) A subsistence allowance of \$1.75 per person per meal may be claimed for each prisoner, patient, or ward being transported only when the time elapsed is in excess of 4 hours one way.

(5) Bus or train. When transportation is by bus or train, reimbursement shall be based on either (A) or (B) below providing the sheriff indicates on the claim the mode of transportation; i.e., regularly scheduled bus, regularly scheduled train, chartered bus, or county-owned bus. The

allowances provided in subsections (1) through (4) above may also be claimed if otherwise allowable.

(A) When transportation is by regularly scheduled bus or train, the actual and necessary cost of such transportation, not to exceed one first class, round-trip fare for each deputy (and matron, if necessary) and one first class, one-way fare for each patient or prisoner transported, may be claimed. The actual and necessary cost of such transportation may include taxi fares incurred at locations other than the county seat of the committing county if supported by receipt. Pullman charges are not allowed.

(B) When transportation is by chartered or county-owned bus, reimbursement may be claimed according to the mileage allowance referenced in(3) above.

(6) Aircraft. When transportation is by scheduled airline, reimbursement shall be based on Rule 713(a), Scheduled Airline. When transportation is by chartered aircraft, reimbursement will be for the actual cost not to exceed the equivalent cost of scheduled airlines' fares.

(7) Ambulance. When transportation is by ambulance, reimbursement shall be based on the actual cost of ambulance service. The allowances provided in subsections (b)(1) through (b)(4) above may also be claimed if otherwise allowable.

(c) Submissions of Claims.

(1) Form. Claims for payment of expenses shall be made on forms provided by the State Controller.

(2) Submission.

(A) Claims for transportation of persons delivered directly to institutions under the jurisdiction of the Department of Corrections and Department of the Youth Authority, shall be filed with the State Controller, Sacramento.

(B) Claims for transportation of persons delivered directly to institutions under the jurisdiction of the Department of Mental Health or the Department of Developmental Services shall be filed in duplicate with the Department of Mental Health or the Department of Developmental Services, Sacramento.

(C) Claims for the return of escapees or parolees to institutions under the jurisdiction of the Department of the Youth Authority, Department of Corrections, and Department of Mental Health or the Department of Developmental Services shall be filed in duplicate with the institution concerned.

(3) Vouchers. The vouchers required to be submitted with such claims are:

(A) Receipt from the institution showing delivery of prisoner, patient, or ward, code section under which committed and names of all persons by whom delivery was made.

(B) Receipt for cost of ambulance when trip is made by ambulance .

(C) Receipt for taxi fare when trip is made by regularly scheduled bus or train.

(D) Any other receipts or vouchers which may be applicable under Rule 710, Receipts or Vouchers.

(d) Probation Officers and Others. Claims for transportation expenses by probation and parole officers, or others, where authorized by law, shall be governed by these rules. Any such claim shall be accompanied by a copy of the court order designating the claimant to make the delivery.

§ 777. Claims of Agents.

Claims of agents returning fugitives from justice or prisoners or wards detained in other states.

(a) Warrant or Equivalent Document. Claims under this section shall not be allowed unless a warrant for the return of the prisoner or ward has been issued by the Governor or the Director of the Youth Authority or unless the agent has been designated by the Administrator, Interstate Probation and Parole Compacts, to return the prisoner or ward. Such warrant or designation may be issued before or after the claimed expenses were incurred.

(b) Certificate. The claim of the agent shall not be allowed unless accompanied by one of the following, as applicable:

(1) Where the prisoner or ward has not been arraigned or placed on trial after his return: a certificate of an authorized representative of the Director of Corrections, Community Release Board, or Youth Authority that the prisoner or ward has been convicted of crime; has violated his probation, parole, or bail, or has escaped from the custody of state authorities; and/or has been returned to the custody of the state agency represented by the certifying official.

(2) A certificate from an authorized representative of the sister state verifying the necessity to present witnesses or evidence in the sister state to gain the release of the fugitive.

(3) A certificate with advance approval by the Governor authorizing the appearance of witnesses, in unusual cases where the interest of Justice would be served, to appear in the sister state on behalf of the fugitive in opposition to his extradition.

(4) Where the prisoner or ward has not been returned: a certificate of the agent stating fully the reasons for the failure to make such a return.

(5) Where the prisoner or ward is returned to another state under the provisions of Section 1389 of the Penal Code after having been brought back from that state and tried in

California, a receipt for the prisoner or ward from the agency or institution in the other state to which he was returned.

(c) Allowable Expenses. The following expenses shall be allowed:

(1) Statutory fees charged by other states in connection with the detention and surrender of the prisoner or ward.

(2) Necessary living expenses of the prisoner or ward only for the period from the date of detention until the arrival of the agent to take him into custody.

(3) When rail transportation is used, expenses for compartment accommodations on the return trip with the prisoner or ward.

(4) Expenses of an assistant when authorized by appointment by the Governor in extradition cases or by the Administrator, Interstate Probation and Parole Compacts, in detainer cases.

(5) Attorney fees, only when authorized in advance by the Attorney General.

(6) Reasonable fees for the assistance of porters in watching prisoners en route.

(7) Expenses for use of chartered aircraft not to exceed the equivalent cost of scheduled airline fares.

(8) Expenses for use of private automobile, at the rate of 18.5 cents per 1.6 kilometer (mile).

(d) Route. The agent shall take the most direct and economical route available. If delays occur, a full explanation stating the reason, length of time delayed, and all other relevant factors shall accompany the claim. If the explanation is satisfactory, the additional expense shall be allowed. No expenses incurred in Sacramento en route shall be allowed.

§ 778. Claims of Non-State Agents Transporting State Fugitives, Prisoners or Wards Detained in Other States Pursuant to Agreements Entered into Under the Computer Assisted Prisoner Transportation Index Service.

(a) Agent Designation. Claims under this section shall not be allowed unless the agent has been designated by the Administrator, Interstate Probation and Parole Compacts, or the Governor to return the prisoner or ward. Such designation may be issued before or after the claimed expenses were incurred.

(b) Regular Extraditions. The Governor's Office shall approve all claims submitted by local agencies in regular extraditions.

(c) Certificate. The claim of the agent shall not be allowed unless accompanied by one of the following, as applicable, except as in (b) above.

(1) Where the prisoner or ward has not been arraigned or placed on trial after his return: a certificate of an authorized representative of the Director of Corrections, Community Release Board, or Youth Authority that the prisoner or ward has been convicted of crime; has violated his probation, parole, or bail, or has escaped from the custody of state authorities; and/or has been returned to the custody of the state agency represented by the certifying official.

(2) A certificate from an authorized representative of the sister state verifying the necessity to present witnesses or evidence in the sister state to gain the release of the fugitive.

(3) A certificate with advance approval by the Governor authorizing the appearance of witnesses, in unusual cases where the interest of justice would be served, to appear in the sister state on behalf of the fugitive in opposition to his extradition.

(4) Where the prisoner or ward is returned to another state under the provisions of Section 1389 of the Penal Code after having been brought back from that state and tried in California, a receipt for the prisoner or ward from the agency or institution in the other state to which he was returned.

(d) Allowable Expenses. The following expenses shall be allowed:

(1) Statutory fees charged by other states in connection with the detention and surrender of the prisoner or ward.

(2) Necessary living expenses of the prisoner or ward only for the period from the date of detention until the arrival of the agent to take him into custody.

(3) Subsistence expenses for the agent in accordance with Section 706(c) for not more than 24 hours unless approved by the Controller's Office because of extenuating circumstances.

(4) When rail transportation is used, expenses for compartment accommodations on the return trip with the prisoner or ward.

(5) Expenses of an assistant when authorized by appointment by the Governor in extradition cases or by the Administrator, Interstate Probation and Parole Compacts, in detainer cases.

(6) Attorney fees, only when authorized in advance by the Attorney General.

(7) Reasonable fees for the assistance of porters in watching prisoners en route.

(8) Expenses for use of chartered aircraft not to exceed the equivalent cost of scheduled airline fares, except when the use of a chartered or agency-owned aircraft will reduce subsistence, care rental and other expenses to an amount below the combined cost of scheduled airline

fares, car rental, subsistence, and other expenses for agents, prisoners or wards.

(9) Expenses for use of private automobile, at the rate of 18.5 cents per 1.6 kilometer (mile).

(e) Route. The agent shall take the most direct and economical route available. If delays occur, a full explanation stating the reason, length of time delayed, and all other relevant factors shall accompany the claim. If the explanation is satisfactory, the additional expense shall be allowed.

Article 17. Bid Protests

Subarticle 1. General Provisions

§ 870.1. Applicability.

This article applies to bid protests under Public Contract Code sections 10306 and 12102, subdivision (h).

§ 870.2. Applicable Regulations.

If there is any inconsistency or conflict between the provisions of article 2.5 and this article, the provisions of this article shall apply.

§ 870.3. Definitions.

(a) As used in this article:

(1) "Bid" shall mean:

(A) an offer in response to a solicitation for materials, supplies, or equipment purchased pursuant to article 3 (commencing with section 10300), chapter 2, part 2, division 2, Public Contract Code; or

(B) an offer in response to a solicitation for electronic data processing or telecommunications goods or services pursuant to chapter 3 (commencing with section 12100) or chapter 3.5 (commencing with section 12120), part 2, division 2, Public Contract Code.

(2) "Bidder" shall mean an individual or entity that submitted a final bid in response to a solicitation that is subject to a protest;

(3) "Declaration" shall mean a written statement that includes the following:

(A) the signature of the person making the statement;

(B) the date on which and place where it was signed;

(C) a statement substantially similar to: "I declare under penalty of perjury under the laws of California that the foregoing is true and correct."

(4) "Detailed statement of protest" shall mean the written statement specifying the legal and factual basis for the protest under section 872.7;

(5) "Document" shall mean a writing as defined in Evidence Code section 250;

(6) "Party" shall mean:

(A) Procurement;

(B) the state agency procuring the product that is the subject of the solicitation;

(C) the protestant;

(D) the proposed awardee; and

(E) any other bidder that submitted a bid and submitted a written request to be a party, except that a bidder that filed a bid protest shall not be a party in a protest filed by another bidder.

(7) "Procurement" shall mean:

(A) the Department of General Services, Procurement Division or its successor; or

(B) another state agency that has been delegated purchasing authority by the Department of General Services;

(8) "Proposed awardee" shall mean the bidder to whom Procurement intends to award a contract as a result of Procurement's evaluation of the protested solicitation;

(9) "Protest" shall mean a written objection by a bidder to an intended contract award proposed by Procurement that is submitted to Procurement under section 872.1 after the posting of an intent to award.

(11) "Protestant" shall mean a bidder that submitted the bid protest that is the subject of the hearing;

(12) "Response to the detailed statement of protest" shall mean a party's written submission under section 872.8;

(13) "Solicitation" shall mean the process by which Procurement requests bids;

(14) "Solicitation document" shall mean the document that describes the goods or services that are to be purchased and establishes the method that will be used to evaluate bids; and

(15) "Solicitation file" shall mean documents used by Procurement in the procurement process, including documents used to evaluate bidders and select a proposed awardee.

Subarticle 2. Requirements for Submissions

§ 871.1. Document Standards.

(a) All documents submitted to the board shall be:

(1) typewritten or computer generated;

(2) standard 8-1/2 by 11 inches each page; and

(3) legible.

- (b) A document submitted as an exhibit during a hearing need not comply with subsection (a)(1) or (2).
- (c) The board may refuse to accept any document that does not comply with this section.

§ 871.2. Documents Submitted by Facsimile.

- (a) Documents that exceed ten pages, including any attachments or exhibits, shall not be submitted to the board by facsimile.
- (b) A document submitted to the board by facsimile in violation of subsection (a) shall not be accepted.
- (c) The first page of a facsimile transmission shall be a cover page that includes:
 - (1) the name of the sender;
 - (2) the name and phone number of a person to be contacted in case of transmission problems; and
 - (3) the total number of pages transmitted, including the cover page.
- (d) A party submitting a document by facsimile has the burden of proving that the entire document was successfully transmitted to the board.

§ 871.3. Copies of Submissions.

- (a) A party shall provide the board with one original and three copies of any document, including any attachments to the document, submitted to the board.
- (b) The original document that is submitted by facsimile and three copies of the document shall be submitted to the board within two working days of the facsimile transmission.

§ 871.4. Service on Parties.

- (a) A party who submits a document, including correspondence, to the board shall send each party a copy.
- (b) A party shall include a declaration of proof of service that the party complied with this section.
- (c) This section shall not apply to the submission of the solicitation file to the board under section 872.4.

Subarticle 3. Pre-Hearing Procedure

§ 872.1. Filing Protest with Procurement.

- (a) A protestant shall file a notice of protest of the proposed award of a contract with Procurement prior to the award of a contract governed by Public Contract Code section 10306.

(b) A protestant shall file a notice of protest of the proposed award of a contract governed by Public Contract Code section 12102, subdivision (h) with Procurement within the following time period:

- (1) no earlier than the issuance of an intent to award a contract; and
- (2) no later than five working days after the issuance of an intent to award a contract.

§ 872.2. Submission of Protest to Board.

- (a) Procurement shall submit a notice of protest to the board within three working days of its receipt of a protest filed under section 872.1.
- (b) At the same time that Procurement submits a notice of protest to the board under subdivision (a), it shall submit a written bid protest summary to the board that shall contain all of the following information to the extent that the information is readily available in the solicitation file:
 - (1) a description of the product or service that is the subject of the protested solicitation;
 - (2) the name of the state agency on whose behalf the solicitation is being administered, or a statement that the solicitation is being administered on behalf of all the state agencies;
 - (3) the following information for each bidder that submitted a final bid:
 - (A) the name of the bidder;
 - (B) mailing address;
 - (C) voice telephone number;
 - (D) facsimile telephone number;
 - (E) name of contact person;
 - (F) job title of contact person;
 - (G) the total dollar amount of the bid, including any corrections or adjustments made by Procurement during the evaluation of the bid; and
 - (H) the total points allocated to the bid, if applicable.
 - (4) the name of the proposed awardee;
 - (5) the statutory authority governing the solicitation; and
 - (6) a statement of the basis for selection.
- (c) Procurement shall provide a copy of the bid protest summary submitted to the board under subdivision (b) to all bidders that submitted a final bid.
- (d) The Executive Officer may dismiss a protest for any of the following grounds:
 - (1) the notice of protest was untimely filed; or
 - (2) the board does not have jurisdiction over the protest.

(e) Prior to dismissing a protest under subsection (d), the protestant shall be:

- (1) notified of the reason for dismissing the protest; and
- (2) given three working days to submit written materials that refute the reason for the dismissal.

(f) The Executive Officer shall review written materials submitted under subsection (e)(2), and any other pertinent materials, and prepare a written decision that complies with section 619.1.

(g) A copy of the Executive Officer's decision shall be mailed or delivered to the protestant and Procurement.

(h) The procedure in subsections (d)-(f) is a hearing under section 617.6.

(i) A protestant may object to the use of the informal hearing process upon receipt of the notice under subsection (e)(1).

§ 872.3. Maintenance of Procurement Records.

(a) Procurement shall maintain all documents used in the evaluation and selection process, including, but not limited to:

- (1) scoring sheets;
- (2) scoring summaries; and
- (3) evaluation and selection report.

(b) The documents described in subsection (a) shall be maintained for ten working days after an intent to award a contract is issued, or until the board issues a final decision on a protest, whichever is longer.

§ 872.4. Submission of Solicitation File to Board.

(a) Within three working days of Procurement's receipt of a protest under section 872.2, Procurement shall submit two copies of each of the following to the board:

- (1) the solicitation document;
- (2) the proposed awardee's final bid;
- (3) the protestant's final bid; and
- (4) any document prepared to record or justify the selection decision, including, but not limited to:

(A) a document used to indicate a proposed award to a bidder who is not the lowest bidder;

(B) the notice of intent to award a contract; and

(C) the evaluation and selection report.

§ 872.5. Availability of Solicitation Documents to Parties.

(a) Procurement shall make available for inspection by a party the documents described in section 872.4 within

three working days after receiving a written request from a party.

(b) A party shall make a request for documents under subsection (a) as soon as practicable and no later than five calendar days after receipt of the detailed statement of protest.

(c) Procurement shall permit a party to obtain a copy of any document described in section 872.4 by one of the following methods determined by Procurement in its discretion:

(1) permit a party to arrange for a private copy service to make a copy of the requested documents at a time and location convenient to Procurement; or

(2) make a copy of the requested documents after receiving advance payment from the party for the reasonable cost of photocopying.

§ 872.6. Schedule for Submission of Written Documents.

(a) The Executive Officer or hearing officer may establish a schedule for the submission of:

- (1) the detailed statement of protest;
- (2) a written request to be a party;
- (3) a response to the detailed statement of protest;
- (4) a rebuttal to the responses to the detailed statement of protest; and
- (5) any other written evidence or argument.

(c) The Executive Officer or hearing officer may require that the parties submit:

- (1) a list of witnesses;
- (2) a declaration from each witness the party intends to have testify that summarizes the testimony of the witness;
- (3) a copy of each exhibit to be introduced into evidence other than items already submitted under section 872.4(a);
- (4) a reasonable estimate of the time needed by each party to present its case;
- (5) pre-hearing motions; and
- (6) any information to assist the efficient administration of the hearing.

§ 872.7. Detailed Statement of Protest.

(a) A protestant shall submit a written detailed statement of protest to the board within 10 calendar days after filing a notice of protest under section 872.1.

(b) If a protestant fails to submit a timely detailed statement of protest, a notice of protest shall be deemed withdrawn.

(1) If a protestant fails to submit a timely detailed statement of protest, the board shall inform all parties in writing that the protest is withdrawn and take no further action on the protest.

(c) A detailed statement of protest shall include a full and complete statement of the relevant law and facts supporting that:

(1) the protestant is the lowest responsible bidder meeting specifications, for a protest under Public Contract Code section 10306; or

(2) the protestant's bid should have been selected in accordance with the selection criteria in the solicitation document, for a protest under Public Contract Code section 12102(h).

§ 872.8. Response to Detailed Statement of Protest.

A party may submit a response to the detailed statement of protest within the time frame determined by the Executive Officer under section 872.6.

§ 872.9. Request for Extension of Time for Submitting Documents or Continuance.

(a) A party may request a continuance of a hearing or an extension of time for the submission of a document, except for the submission of a detailed statement of protest.

(b) A request under subdivision (a) must be in writing and submitted to the Executive Officer as soon as the need for the request is known to the party, but no later than five working days prior to the date of the hearing or deadline for the submission of documents.

(1) If a party is first aware of the need for a continuance request on the day scheduled for hearing, the request may be made to the hearing officer.

(2) A request under subdivision (a) made less than five working days prior to the date of the hearing or deadline for the submission of documents shall not be granted unless:

(A) it was impossible for the party to make the request any sooner; and

(B) the party made the request as soon as becoming aware of the need for it.

(c) Prior to making a request under subdivision (a), a party must contact all other parties and:

(1) inform the parties of the need for the request;

(2) determine whether or not each party will agree to the request; and

(3) if the request is for a continuance of a hearing, determine alternative dates available to all parties.

(d) A request under subdivision (a) must include a declaration that includes:

(1) the specific facts showing good cause for the request;

(2) available documentation of the specific facts showing good cause for the request;

(3) the date when the facts supporting the request became known to the party; and

(4) a statement that all parties were contacted as required by subdivision (c) and a summary of the outcome.

(e) A request under subdivision (a) shall be granted only if good cause exists.

(f) Good cause for a request under subdivision (a) exists for any of the following:

(1) unavailability due to the death or incapacitating illness of a party, a representative, or a member of the immediate family of a party or representative, when it is not possible to substitute another individual because of the proximity of the hearing date or deadline for submission of documents;

(2) failure to receive a copy of the detailed statement of protest;

(3) failure to receive a copy of a response to a detailed statement of protest;

(4) failure to make documents available to a party under section 872.5 after a timely request;

(5) failure to receive timely notice of the hearing date as required by section 872.11; or

(6) agreement by all parties to the continuance or extension.

§ 872.10. Dismissal for Failure to State a Basis to Uphold Protest.

(a) After reviewing the detailed statement of protest and responses of the parties, the Executive Officer shall:

(1) schedule the protest for further hearing under section 872.11; or

(2) recommend that the board dismiss the protest.

(b) The board may dismiss a protest for any of the following reasons:

(1) the detailed statement of protest fails to comply with section 872.7(b);

(2) the board does not have jurisdiction over the protest;

(3) the detailed statement of protest fails to state a basis upon which the protest may be upheld; or

(4) the protest is entirely without merit.

(c) If the Executive Officer recommends that the protest be dismissed under subsection (a)(2), the Executive Officer shall do all of the following:

- (1) schedule the dismissal recommendation for action by the board;
- (2) submit a written recommendation explaining the reasons for dismissing the protest without further hearing;
- (3) notify all interested parties in writing that the dismissal recommendation has been scheduled for action by the board; and
- (4) send a copy of the written recommendation required by subsection (c)(2) to the parties.
- (d) The board's consideration of and action on the Executive Officer's recommendation to dismiss a protest is a hearing limited to written materials under section 617.6.
- (1) A protestant may object to the use of the informal hearing process upon receipt of the notice of recommendation of dismissal under subsection (c)(3).

§ 872.11. Assignment and Scheduling for Hearing.

- (a) The Executive Officer shall assign a protest that is not dismissed under section 872.10 to a hearing officer.
- (b) The Executive Officer shall schedule the protest for hearing and send written notice to the parties.

§ 872.12. Pre-Hearing Conference.

- (a) The hearing officer or Executive Officer may conduct a prehearing conference.
- (b) The parties shall receive reasonable written notice of the time and location of a prehearing conference.
- (c) A prehearing conference may address any of the following:
 - (1) clarification of issues;
 - (2) identity of witnesses;
 - (3) exchange of witness lists;
 - (4) limitation of the number of witnesses;
 - (5) limitation on the scope of a witness' testimony;
 - (6) limitation of time allocated to a party's presentation of evidence;
 - (7) limitation of time allocated to a party's cross-examination of witnesses;
 - (8) exchange of exhibits;
 - (9) objections to evidence;
 - (10) order of presentation of evidence;
 - (11) order of cross-examination of witnesses;
 - (12) protective orders;
 - (13) stipulations;

(14) dismissal for any of the grounds included in section 872.10(b);

(15) pre-hearing motions; and

(16) any other matters that will promote the orderly and efficient conduct of the hearing.

(d) The hearing officer or Executive Officer may require the submission of prehearing statements concerning matters to be discussed at the prehearing conference.

(e) The hearing officer may issue a prehearing order incorporating the matters determined at the prehearing conference.

(1) The hearing officer may direct one of the parties to prepare a prehearing order.

(f) If the hearing officer decides to dismiss a protest under subsection (c), the hearing officer shall prepare a proposed decision for the board under section 619.3.

(g) A prehearing conference may be conducted by electronic means.

§ 872.13. Representation of Parties.

(a) A party that chooses to be represented shall notify the board in writing with the following information concerning the representative:

- (1) name;
- (2) address;
- (3) telephone number, including area code; and
- (4) facsimile number, including area code.

(b) Once notified that a party has a representative, the board shall send all notices to the representative until the party informs the board that the person is no longer representing the party.

(c) Only one representative for a party may actively participate in a hearing.

(1) Active participation of a representative includes:

- (A) conducting the direct examination of a witness;
- (B) conducting the cross-examination of a witness;
- (C) objecting to evidence;
- (D) responding to objections;
- (E) making offers of proof; and
- (F) arguing issues of fact or law pertaining to subsection (c)(1)(A)-(E).

(2) No more than one representative for each party may:

- (A) for each of the party's own witnesses:
 - 1. examine the witness;
 - 2. respond to objections raised during the examination;
- and

3. make and argue objections during the cross-examination of the witness.

(B) for each of the other parties' witnesses:

1. make and argue objections during the examination of the witness.

2. cross-examine the witness; and

3. respond to objections raised during the cross-examination;

(C) make an opening statement; or

(D) make a closing argument.

Subarticle 4. Hearing Procedure

§ 873.1. Hearing by Electronic Means.

The party that requested that all or part of a hearing be conducted by electronic means under section 617.4 shall be responsible for providing, operating, and paying for all necessary equipment.

§ 873.2. Record of Hearing.

(a) Each hearing shall be reported by a certified court reporter provided by the Board or recorded by electronic means.

(b) Any party may request the board to arrange for the preparation of a hearing transcript.

(1) The party requesting the preparation of a hearing transcript shall bear all costs for its preparation.

(2) One copy of the transcript shall be provided to the board at no cost to the board.

§ 873.3. Conduct of Hearing.

(a) The hearing officer or Executive Officer shall determine whether the hearing shall:

(1) permit the presentation of oral evidence under sections 617.7 and 873.5; or

(2) be limited to the submission of written materials under sections 617.6 and 873.4.

(b) The determination made under subsection (a) shall be based on the following factors:

(1) complexity of legal or factual issues;

(2) necessity to evaluate credibility of witnesses for a proper determination of issues;

(3) parties' representation by legal counsel;

(4) necessity of witnesses being subject to cross examination for the proper determination of issues; and

(5) any other factor likely to affect a just and proper determination of issues.

(c) The parties shall be informed of whether the hearing will be conducted under subsection (a)(1) or (a)(2).

(d) The hearing officer may allow or request the parties to submit a post-hearing brief.

(1) A post-hearing brief shall be limited to legal and factual arguments related to relevant issues under section 873.7 or identified by the hearing officer.

(2) The hearing officer shall inform the parties of the deadline for the submission of a post-hearing brief.

§ 873.4. Protest Limited to Written Materials.

(a) An assertion made in the detailed statement of protest that is supported by facts alleged in the detailed statement of protest shall be presumed to be true unless rebutted by a party in the party's response to the detailed statement of protest.

(b) An assertion made in a party's response to the detailed statement of protest that is supported by facts alleged in the response shall be presumed to be true unless rebutted by the protestant in its submission under section 872.6.

§ 873.5. Presentation of Oral Evidence.

Each party has the right to cross examine witnesses called to testify by another party.

§ 873.6. Evidence.

(a) All relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(1) This does not limit the discretion of the hearing officer under section 617.2(b).

(b) Evidence that qualifies under subdivision (a) may be admitted even though there is a common law or statutory rule which might make its admission improper over objection in a civil action.

(c) Objections to and arguments about evidence may be considered when determining the weight to be given to the evidence.

§ 873.7. Scope of Hearing.

(a) In a protest under Public Contract Code section 10306, the protestant must prove that it is the lowest responsible bidder meeting specifications in order for the protest to be granted.

(b) In a protest under Public Contract Code section 12102(h), the protestant must prove that its bid should

have been selected in accordance with the selection criteria in the solicitation document.

(c) Evidence shall be limited to issues that are:

(1) relevant to subdivision (a) or (b), whichever is applicable; and

(2) identified in the protestant's detailed statement of protest; or in a party's response to the detailed statement of protest.

(d) The protest may be denied without determining any other issues raised under subdivision (c) if:

(1) Procurement alleged that the protestant was not responsive to the requirements of the solicitation document in its response to the detailed statement of protest; and

(2) the protestant failed to prove that its bid was responsive to the requirements of the solicitation document.

§ 873.8. Burden of Proof.

(a) The protestant shall have the burden of proof.

(b) The standard of proof is a preponderance of the evidence.

§ 873.9. Order of Presentation of Evidence.

(a) In a hearing permitting the presentation of oral evidence under section 873.3(a)(1), the parties shall present evidence in the following order, except as provided in subsection (b):

(1) the protestant;

(2) Procurement;

(3) proposed awardee; and

(4) other parties in an order determined by the hearing officer.

(b) In a hearing permitting the presentation of oral evidence under section 873.3(a)(1) that concerns a solicitation in which Procurement intends to award a contract pursuant to article 3 (commencing with section 10300), chapter 2, part 2, division 2, Public Contract Code to other than the lowest bidder, the parties shall present evidence in the following order:

(1) Procurement;

(2) the protestant;

(3) proposed awardee; and

(4) other parties in an order determined by the hearing officer.

(c) The hearing officer may require the parties to present evidence in any order that furthers the efficiency of the hearing.

§ 873.10. Closure of Hearing Record.

(a) In a hearing in which post-hearing briefs were not allowed or permitted, the hearing record shall be closed upon the conclusion of testimony and presentation of any oral argument by the parties, unless otherwise ordered.

(b) In a hearing in which post-hearing briefs were allowed or permitted, the hearing record shall close at the deadline for the submission of post-hearing briefs, unless the hearing officer or Executive Officer orders otherwise or grants an extension under section 872.9.

(c) No evidence or argument shall be submitted to the board after the close of the hearing record.

(1) The hearing officer of [sic] Executive Officer may grant a timely written request to reopen the hearing record for good cause.

(A) A written request is timely if it is filed with the board within 24 hours of the closing of the hearing record.

§ 873.11. Failure to Appear or Proceed.

(a) The failure of a protestant to appear at a hearing, or to proceed with a hearing shall constitute a withdrawal of the protest, unless an extension of time for submission of documents or a continuance of the hearing has been granted.

(b) The failure of Procurement to appear at a hearing, or to proceed with a hearing shall constitute a withdrawal of its opposition to the protest, unless an extension of time for submission of documents or a continuance of the hearing has been granted.

(c) The failure of the proposed awardee to appear at a hearing, or to proceed with a hearing shall constitute a withdrawal of its opposition to the protest, unless an extension of time for submission of documents or a continuance of the hearing has been granted.

(d) The failure of any other party to appear at a hearing, or to proceed with a hearing shall constitute a withdrawal of the party's request to participate as a party in the protest, unless an extension of time for submission of documents or a continuance of the hearing has been granted.

§ 873.12. Withdrawal of Protest.

(a) A protestant may withdraw its protest at any time prior to the board's adoption of a decision in the matter under section 619.5.

(b) The protestant shall notify the board in writing of the withdrawal of the protest.

§ 873.13. Withdrawal of Opposition to Protest.

(a) Procurement or the proposed awardee may withdraw its opposition to the protest at any time prior to the board's adoption of a decision in the matter under section 619.5.

(b) If Procurement withdraws its opposition to the protest under subsection (a), the protest shall be upheld without further hearing.

(c) If the proposed awardee withdraws its opposition to the protest under subsection (a), it shall not participate any further in the hearing.

Subarticle 5. Prohibited Conduct

§ 874.1. Contempt.

In addition to the grounds provided in section 618.3, a party is subject to a contempt sanction for an intentional failure or refusal, without substantial justification, to comply with a timely request under section 872.5.

Article 19. Overpayments

§ 890. Overpayments.

Upon authorization of the State Board of Control, a state agency may retain overpayments of the nature and amount specified in Section 16302.1 of the Government Code in accordance with the specific conditions of that section. State agencies desiring to secure such authorization shall file an application therefor with the State Board of Control, accompanied by a statement of the circumstances.